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Attorneys for Plaintiffs
GREAT AMERICAN INSURANCE COMPANY,
GREAT AMERICAN INSURANCE COMPANY OF NEW YORK,
formerly known as **AMERICAN NATIONAL FIRE INSURANCE COMPANY**

FILED
08 JUN 16 PM 4:07
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: CP DEPUTY

UNITED STATES DISTRICT COURT FOR

THE SOUTHERN DISTRICT OF CALIFORNIA

GREAT AMERICAN INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY Plaintiff, v. MARTINA ENTERPRISES U S INC., a Washington corporation doing business as MARTINA MECHANICAL ENTERPRISES (US) INC.; HERMAN KOECHL, an individual; CHRISTINA KOECHL, an individual; and DOES 1-100, Defendants.	CASE NO.: 08 CV 0314 L JMA **FIRST AMENDED COMPLAINT FOR:** **1. Negligence** **2. Breach of Contract** **3. Breach of Express Warranty** **4. Breach of Implied Warranty** **5. Express Indemnity** **6. Implied Indemnity** **7. Equitable Indemnity** **8. Comparative Indemnity** **9. Alter Ego** **10. Declaratory Relief**

Plaintiffs GREAT AMERICAN INSURANCE COMPANY and GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY (hereinafter collectively referred to as "Plaintiffs" or "GREAT AMERICAN") hereby allege as follows:

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CR DOC: 123312

THE PARTIES

1. Plaintiff GREAT AMERICAN INSURANCE COMPANY is, and at all times mentioned herein was, an Ohio-based insurance company with its principal place of business in Ohio.

2. Plaintiff GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY is, and at all times mentioned herein was, a New York-based insurance company with its principal place of business in New York.

3. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. is a Washington corporation with its principal place of business in Washington State and doing business in the State of California as MARTINA MECHANICAL ENTERPRISES (US) INC.

4. Plaintiffs are informed and believe and thereon allege that Defendant HERMAN KOECHL is an individual who is a citizen of, and resides in, the State of California.

5. Plaintiffs are informed and believe and thereon allege that Defendant CHRISTINA KOECHL is an individual who is a citizen of, and resides in, the State of California.

6. Plaintiffs are informed and believe and thereon allege, that at all times herein mentioned, that each Defendant was authorized to do business in California and was the agent, officer, partner, alter ego, joint venturer, and/or the employee of each of the remaining Defendants and was at all times herein mentioned, acting within the course and scope of such agency, authority and/or employment.

7. The true names or capacities of Defendants named herein as DOES 1 through 100, inclusive, are unknown to Plaintiffs at this time. The names, capacities and relationships of DOES 1 through 100, inclusive, will be alleged by amendment to this Complaint when they have been ascertained.

8. Plaintiffs are informed and believe and thereon allege that each of the Defendants, including DOES 1 through 100, inclusive, dispute Plaintiffs' contentions herein and are in some manner legally responsible for the acts and omissions alleged herein, whether as corporations, other forms of business entities and/or as alter egos for same, and/or actually and proximately caused and contributed to the various losses and damages referred to herein.

9. The allegations of this Complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

JURISDICTION AND VENUE

10. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because Plaintiffs and Defendants are citizens of different states and although Plaintiffs damages have not yet been fully ascertained, upon information and belief, their damages and the amount in controversy exceed $75,000.00 exclusive of interest and costs.

11. This action arises from a construction defect litigation involving a 321 unit condominium project known as CityFront Terrace, located in San Diego, California.

12. Venue is proper in this judicial district under 28 U.S.C. §1391(b).

MATERIAL ALLEGATIONS

13. On or about December 22, 2003, CityFront Terrace Homeowners Association ("Homeowners Association") filed a Complaint for Damages for Strict Liability, Breach of Implied Warranty, and Negligence, among other causes of action, case number GIC 823195, in the San Diego Superior Court, ("Underlying Action") alleging that the entities involved in the design, development and construction of the CityFront Terrace project ("Project") were liable for property damages in excess of $90 million for alleged deficiencies (including defective plumbing systems) at the Project. The Complaint was amended from time to time, with the final operative Complaint identified as the Seventh Amended Complaint filed on or about February 22, 2006.

14. Marina Village Associates, L.P., and related entities, designed, developed and constructed the Project between 1991 and 1994. In order to construct the Project, Marina Village Associates, L.P., entered into a contract with TKCC, Inc, dba Koll Construction ("Koll") for the construction of the entire Project ("the Prime Contract"), including all plumbing systems. A copy of the Prime Contract is attached hereto as Exhibit "A." In turn, Koll entered into a subcontract with Defendant MARTINA ENTERPRISES (US) INC., and DOES 1 through 100, inclusive (collectively referred to as "Defendants"), and each of them, to furnish all labor, materials and services necessary for the installation of all plumbing systems at the Project (the "Subcontract"). A copy of the Subcontract is attached hereto as Exhibit "B." These services and materials contributed to the

construction deficiencies at the Project, as more fully described below.

15. At the time of the construction of the Project and thereafter, there were in effect insurance policies issued by Plaintiffs Great American Insurance Company and Great American Insurance Company of New York (formerly known as American National Fire Insurance Company) to the various developing entities, including, but not limited to, Marina Village Associates, L.P., Urban Partners, L.P., Urban West Associates, Kriozere Corporation, Michael Kriozere, The Gimbel Corporation, Kabuto International Corporation, Gentium Realty Investments, and Royal Crest Investments (hereinafter "Insureds") providing coverage for the damage to the Project insuring against identified losses and damages.

16. Plaintiffs are informed and believe that the Insureds designed, developed and constructed the Project as mass produced residential condominiums. The project was initially completed on January 7, 1994. Thereafter, on January 10, 1995, the Insureds elected to temporarily discontinue marketing units for sale, until such time as the market for downtown condominiums improved. On or about January 17, 1995, the Department of Real Estate of the State of California (hereinafter "DRE") approved the Insureds' request for short term rentals and the DRE further imposed a restriction that prior to the time the subdivider or any successor in interest offers any units for sale or long term lease to the public, it would be necessary to activate or renew the Public Report. Plaintiff is futher informed and believes that the Insureds did in fact convey the Project to a successor entity 500 West Harbor Drive, LLC (the Successor Developer) in February 2000 for the purpose of fulfilling the original design intent and purpose of the development–to sell units at the Project for the first time to consumers.

17. Plaintiffs are informed and believe that the Successor Developer was not a seller of an isolated used product without connection to the original manufacturer, the Insureds, but on the contrary, the Successor Developer was an integral member of a development enterprise that began with the initial design, development and construction of the Project by the Insureds, as demonstrated by the following facts:

a. The Successor Developer had a participatory connection with the Insureds, such that the Successor Developer contracted not only for the purchase of the entire CityFront Project, but also all of the Initial Developers' tangible and intangible personal property in connection with the Project, including all trademarks, records, development goodwill, contract rights, warranties, guarantees, licences, permits, development entitlements, governmental approvals (including DRE approvals and related documents), development rights, air rights, and water rights, all in connection with the Project and development enterprise, which had been generated by the Insureds and utilized in connection with the completion of the development and sale of the Project by the Successor Developer.

b. The Successor Developer had a participatory connection with the Insureds, such that the Insureds and Successor Developer mutually agreed to the form of the Property Management Agreement and the Listing Agreement for sales to the public, as well as the individuals or entities filling both management and sales positions. The Successor Developer was bound by this agreement with the Insureds in connection with the Successor Developers interim management of the Project and the ultimate sales of the Project units to the public.

c. The Successor Developer had a participatory connection with the Insureds, such that the Successor Developer represented to the public in marketing brochures that it was the premier developer, and in fact the developer of CityFront, such that it was an integral part of the development enterprise that created a market for the condominium units initially manufactured, but never sold to the public by the Insured.

d. The Successor Developer assumed the role and attendant obligations of Subdivider under the Final Subdivision Report, as required by DRE.

e. The Successor Developer assumed the role and attendant obligations of Declarant under the Covenants, Conditions, and Restrictions, as required by the DRE.

f. The Successor Developer was required by the DRE to reasonably investigate the as-built condition of the Project and to appropriately and fully re-condition the Project, in order to fulfill the Successor Developers duty to and the reasonable expectation of the purchasers of the units that the Project was designed, constructed, renovated, reconditioned and remediated in a reasonable manner, free from defects. Successor Developer became aware of problems with the drain, waste and vent lines at the Project, created by Defendants, and ~~each~~ of them, and attempted to correct those problems as part of the re-conditioning of the Project. Successor Developer performed significant and substantial modifications and repairs to the plumbing systems at the Project, utilizing substantially the same modification and repair methodology first employed before Successor Developer purchased the Project. Said problems were not corrected, and these problems persisted when the Successor Developer sold the units to the public. In this and other ways, the work of Defendants, and each of them, was incorporated into and was an integral component of the condominium units at the Project.

g. The Successor Developer (a) was required to determine the nature and extent of the defective conditions that the Successor Developer, as a matter of duty imposed by California law, was required to correct before the initial public sales of the Project units to the public, and (b) represented that they corrected, repaired and re-fabricated the Project's defective conditions, such that reasonable purchasers would reasonably expect the Project's reconditioned units initially constructed as residential condominiums, that had never been sold before, would present no greater risk of defect than if the Project was completed at the time of the sales.

h. The Successor Developer became an integral member of the development enterprise by selling units allegedly reconditioned to like new condition, and were in fact new in relation to their useful life expectancy for a concrete and steel structure, such that the ultimate purchasers had reasonable expectations that the Project was designed, constructed, renovated, reconditioned and remediated in a reasonable manner, free from defects.

i. The Successor Developer in fact acknowledged its own role in the development enterprise by filing the First Amended and Restated Declaration of Covenants, Conditions and Restrictions in the San Diego County Recorder's Office on June 27, 2000 as Document No. 2000-0337860 and by selling the Project condominiums beginning in approximately July 2000 until approximately March 2003.

18. Plaintiffs are informed and believe that as a result of the above outlined efforts by the Successor Developer, the Project was not substantially completed in its final form for sale to the public until July 2000 when the Successor Developer first began to offer units for sale.

19. After more than three years of litigation between the Insureds, the Successor Developer and the Homeowners Association, and numerous mediations and pursuant to the terms of the

insurance policies, on or about April 4, 2007, Plaintiffs paid $2,879,831.27 to resolve all claims by the Homeowners Association against the Insureds in the Underlying Action arising out of the work performed by Defendants.

20. To the extent of payments made by Plaintiffs on behalf of its Insureds, Plaintiffs are legally and equitably subrogated to the rights and interests of its Insureds and are therefore entitled to institute and pursue legal remedies against the Defendants to recover any and all amounts paid by Plaintiffs under their policies.

COUNT ONE

(Negligence as to all Defendants)

21. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 20, inclusive, as though they are fully set forth herein.

22. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, negligently, carelessly and wrongfully failed to use reasonable care in furnishing all labor, materials and services necessary for the installation of the plumbing system at the Project.

23. Plaintiffs are further informed and believe and thereon allege that Defendants, and each of them, negligently and carelessly failed to perform their contractual obligations and to exercise reasonable care and diligence to avoid loss and to minimize and mitigate damages which could have been prevented by reasonable efforts on the part of said Defendants, or by expenditures which should have been made in the exercise of due care.

24. As a proximate and direct result of Defendants' actions, the Project suffered extensive physical damage to, and loss of use of, numerous building components other than the plumbing system, as well as the plumbing system itself, at various times after construction of the Project. As a result, Plaintiffs were required to pay $2,879,831.27 to resolve all claims by the Homeowners Association against the Insureds in the Underlying Action.

COUNT TWO

(Breach of Contract as to all Defendants)

25. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 24, inclusive, as though they are fully set forth herein.

26. The Insureds were the foreseeable and intended third party beneficiaries of the Subcontract between Defendants and Koll. The Subcontract provides in paragraph 16 of Attachment B to the Subcontract that all work within the Subcontract shall be completed to the satisfaction of the Insureds, identified as "Owner." In addition, the Subcontract provides at paragraph 20 of Attachment B to the Subcontract that all references within the Project specifications to "Contractor" shall be interpreted as "Subcontractor" and shall be included as Subcontractor's work. Paragraph 1(e) of the General Terms of the Subcontract requires Subcontractor to defend and indemnify the Insureds, identified as "Owner." Paragraph 21 of the General Terms of the Subcontract provides a guarantee to the Insureds, identified as "Owner" for the plumbing systems. The Insureds fully performed all conditions, covenants, and promises in accordance with the terms and conditions of the Subcontract.

27. According to the terms of the Subcontract, Defendants, and each of them, agreed to provide and install the plumbing systems at the Project in a reasonable and workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project identified in the Prime Contract.

28. Plaintiffs are informed and believe and thereon allege that Defendants breached the Subcontract by failing to construct the plumbing systems in a reasonable and workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project identified in the Prime Contract.

29. As a proximate and direct result of Defendants' actions, the Project suffered extensive physical damage to, and loss of use of, numerous other building components other than the plumbing system, as well as the plumbing system itself, at various times after construction was completed. As a result, Plaintiffs were required to pay $2,879,831.27 to resolve all claims by the Homeowners Association against Plaintiffs' Insureds in the Underlying Action arising out of the work performed by Defendants.

30. Pursuant to the terms of the Subcontract, Plaintiffs are entitled to attorneys' fees and costs.

COUNT THREE

(Breach of Express Warranty As to All Defendants)

31. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 30 as though fully herein.

32. The Subcontract provides further that the Insureds, referred to as "Owner," shall be entitled to the protections and benefits of the express warranty set forth in the following provision of the subcontract:

> GUARANTEE. Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee form, will guarantee all materials and workmanship and agree to replace at his sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees will inure to the benefit of the Contractor, Owner, their successors or assigns excluding equipment warranties. [*General Terms, paragraph 21]*

The Prime Contract, which is part of the Contract Documents, does not contain any time limitations on the warranties to the Insureds.

33. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, breached said warranties by failing to construct the plumbing system in a reasonable and workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project as set forth in the Prime Contract.

34. As a proximate result of the breach of the express warranties by Defendants, and each of them, Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid by Plaintiffs to settle the Underlying Action by the Homeowners Association.

35. The Insureds previously provided notice to each Defendant, and the insurance carriers of Martina that the Insureds were aware of at that time, of the claims and defect allegations made by the Homeowners Association. This Complaint will serve as further notice of such conditions.

Plaintiffs are informed and believe and thereon allege that Defendants, and the insurers, declined to acknowledge their responsibilities to repair the defects and damages as referenced above.

COUNT FOUR

(Breach of Implied Warranty as to All Defendants)

36. Plaintiffs reallege paragraphs 1 through 35 of the Complaint above and incorporate them herein by this reference as though fully set forth hereat.

37. Plaintiffs are informed and believe and thereon allege that each of the Defendants herein entered into the Subcontract with Koll expressly for the benefit of the Insureds, and this Subcontract provided, inter alia, that the Defendants would furnish all labor and materials and services necessary, would perform their work in a good and workmanlike manner, and that Defendants were committed to quality throughout all phases of their work.

38. Plaintiffs are informed and believes and thereon allege that each of the Defendants impliedly warranted that the various products, services, items, structures and systems supplied, manufactured, assembled, designed and/or constructed by each of them, would be reasonably fit and merchantable for all aspects.

39. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, breached said warranties by failing to construct the plumbing system in a reasonable and workmanlike manner, in conformance with the appropriate standard of care, in conformance with the applicable code and statute requirements, and in conformance with the requirements of the plans, specifications, and Contract Documents for the Project as set forth in the Prime Contract.

40. As a proximate result of the breach of the implied warranties by Defendants, and each of them, Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid by Plaintiffs to settle the Underlying Action by the Homeowners Association.

41. The Insureds previously provided notice to each Defendant, and the insurance carriers of Martina that the Insureds were aware of at that time, of the claims and defect allegations made by the Homeowners Association. This Complaint will serve as further notice of such conditions. Plaintiffs are informed and believes and thereon allege that Defendants, and the insurers, declined to acknowledge their responsibilities to repair the defects and damages as referenced above.

COUNT FIVE

(Express Indemnity As to All Defendants)

42. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 41 as though fully herein.

43. The Subcontract provides further that the Insureds, referred to as "Owners," shall be entitled to the protections and benefits of the express indemnification agreement set forth in the following provision of the Subcontract:

> Hold Harmless Agreement: Subcontractor shall assume liability and indemnify the Contractor and Owner, (from and against any liability and loss, cost, damages, expenses, including attorney fees, on account of claims for personal injury, including death, sustained by any person or persons whomsoever, including employees of Subcontractor, and for injury to or destruction of property of the person or organization, including loss of use thereof, arising out of the performance of the work under this Subcontract, excepting only such matters caused solely and exclusively by the active negligence or the willful misconduct of the Contractor. [*General Terms, 1(e)*]

44. Plaintiffs are informed and believes and thereon allege that, some or all of the damages suffered by the Homeowners Association were caused by, or arose out of, the performance of Defendants' obligations pursuant to the Subcontract.

45. Plaintiffs are informed and believe that the Insureds tendered the indemnity of the Underlying Action by the Homeowners Association to Defendants, and the insurance carriers of Martina that the Insureds were aware of at that time, and Defendants and the insurers have unreasonably and unjustifiably denied, failed, refused and neglected to indemnify the Insureds and thereby breached the indemnity agreement in the Subcontract.

46. Plaintiffs are informed and believe and thereon allege that, it is entitled to indemnity from Defendants and the insurers based on the terms of the express indemnity agreement set forth above, in a sum equal to $2,879,831.27 paid by Plaintiff to settle the Underlying Action by the Homeowners Association.

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COUNT SIX

(Implied Contractual Indemnity As to All Defendants)

47. Plaintiffs refer to and incorporate herein by reference Paragraphs 1 through 46 as though fully set forth herein.

48. Plaintiffs are informed and believe and thereon allege that Defendants entered into the Subcontract with Koll for the express benefit of the Insureds and the Subcontract provided that Defendants, and each of them, would be responsible for the consequences of their own work and not impose such responsibility on the Insureds.

49. Plaintiffs are entitled to implied contractual indemnity from Defendants, and each of them, pursuant to, inter alia, Code of Civil Procedure Section 1021.6, for injuries and damages sustained by Plaintiffs for the sums paid by way of settlement in the Underlying Action.

50. Plaintiffs have suffered damages in a sum equal to $2,879,831.27 paid by Plaintiffs to settle the Underlying Action by the Homeowners Association.

COUNT SEVEN

(Equitable Indemnity As to All Defendants)

51. Plaintiffs refer to and incorporate, herein, all of the allegations contained in Paragraphs 1 through 50 as though fully herein.

52. Plaintiffs deny that the Insureds either caused or contributed to the losses suffered by the Homeowners Association. Plaintiffs are informed and believe and thereon alleges that the conduct of Defendants, and each of them, proximately caused and contributed to the losses suffered by the Homeowners Association and paid by Plaintiffs.

53. Plaintiffs are informed and believe and thereon allege that the losses suffered by the Homeowners Association were substantially caused by the breach of contract, negligence or other wrongful conduct of Defendants, and each of them, thereby entitling Plaintiffs to have the quantum of legally responsible conduct of Defendants, and each of them, determined by this Court.

54. Plaintiffs are informed and believe and thereon allege that Plaintiffs are entitled to contribution from, and apportionment of, the liability of Defendants, and each of them, to the extent that the legally responsible conduct of said Defendants exceeds that of the Insureds.

55. Plaintiffs are informed and believe and thereon allege that the legally responsible conduct of Defendants and each of them contributed in an undetermined percentage to the losses sustained by the Homeowners Association. Plaintiffs are informed and believe and thereon allege that they are entitled to contribution from and an apportionment of liability of Defendants, and each of them, to the extent that the legally responsible conduct of said Defendants proximately caused and contributed to the losses sustained by the Homeowners Association, so that the liability is ultimately assessed among the parties in direct proportion to the percentage of fault attributable to the conduct of Defendants, and each of them. Plaintiffs allege that the amount of indemnification and contribution due from Defendants is not less than $2,879,831.27, the amount Plaintiffs paid to settle the Underlying Action by the Homeowners Association.

COUNT EIGHT

(Comparative Indemnity As to All Defendants)

56. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 55 as though fully herein.

57. Plaintiffs hereby deny that the Insureds either caused or contributed to the damages sustained by the Homeowners Association. Plaintiffs are further informed and believe and thereon allege, that the fault, carelessness, negligence, breach of contract, and other wrongful conduct, in whole or in part, of all Defendants, and each of them, proximately caused and contributed to the events, incidents, and damages suffered by the Homeowners Association.

58. Plaintiffs are informed and believe and thereon allege that the Insureds' contribution to the damages suffered by the Homeowners Association is less than 100% of the total of all legally cognizable conduct proximately causing the loss, injury, damage and detriment, hence liability must be assessed against all Defendants, in direct proportion to the percentage of legally cognizable conduct attributable to each of the Defendants for the alleged loss, injury, damage and detriment.

59. Based on the foregoing, Plaintiffs are informed and believe and thereon allege that, all Defendants, and each of them, should be required to indemnify Plaintiffs for all, or a portion of, the $2,879,831.27 in damages paid by Plaintiffs to the Homeowners Association.

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COUNT NINE

(Alter-Ego as to all Defendants)

60. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 59, inclusive, as though fully set forth hereat.

61. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. and the Insureds entered into written a contractual agreement, the same as or similar to Exhibit "B."

62. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. was a corporation when it entered into a written contract with the Insureds.

63. Plaintiffs are informed and believe and thereon allege that Defendant MARTINA ENTERPRISES (US) INC. was managed and/or dominated and/or controlled by Defendants HERMAN KOECHL either alone or in conjunction with CHRISTINA KOECHL, and that Defendant MARTINA ENTERPRISES (US) INC. was their "alter ego."

64. Plaintiffs are informed and believe and thereon allege that MARTINA ENTERPRISES (US) INC. did not follow corporate formalities and was a sham corporation.

65. Plaintiffs are informed and believe and thereon allege HERMAN KOECHL and CHRISTINA KOECHL, as the Responsible Managing Officers, and/or Directors, and/or Officers, made the construction, design, and management decisions and representations and ratified the decisions of other construction entities that resulted in the damages as alleged, thus making them personally liable, along with MARTINA ENTERPRISES (US) INC.

66. A dispute has arisen and an actual controversy now exists between Plaintiffs, MARTINA ENTERPRISES (US) INC., HERMAN KOECHL, CHRISTINA KOECHL, and each of them, in that Plaintiffs contend that recognition of the privilege of separate existence would promote injustice because HERMAN KOECHL and CHRISTINA KOECHL, are the alter egos, principles, agents or persons with apparent authority to bind MARTINA ENTERPRISES (US) INC. to a written contract.

67. As a direct and proximate result, Plaintiffs have suffered damages in a sum equal to

$2,879,831.27 paid in settlement based upon the allegations in the underlying action by the Homeowners Association arising from the Defendants' actions at the Project. On this basis, Plaintiffs are entitled to their out of pocket damages, including reasonable attorneys' fees, for any and all losses, sums, costs and expenditures attendant to this litigation proximately and legally caused by Defendants.

COUNT TEN

(Declaratory Relief - Indemnity - As to All Defendants)

68. Plaintiffs refer to and incorporate by this reference all of the allegations contained in paragraphs 1 through 67 as though fully herein.

69. A dispute has arisen and an actual controversy now exists between Plaintiffs on the one hand, and Defendants, and each of them, on the other hand in that they contend that they are entitled to express indemnity, equitable indemnity, implied contractual indemnity, apportionment and/or contribution, while Defendants, and each of them, deny such obligations.

70. Plaintiffs desire a judicial determination of their respective rights and Defendants' duties in conjunction with the matters herein alleged and a judgment in Plaintiffs' favor as to any obligations by said Defendants, and each of them to Plaintiffs.

REQUEST RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For compensatory damages in the amount of $2,879,831.27;
2. For a declaration that each Defendants are responsible for any sums awarded to Plaintiffs;
3. For an immediate declaration that Defendants had a duty to indemnify the Insureds in the underlying action pursuant to the terms of the written agreement entered into by Defendants and the Insureds;
4. For a declaration of the amount for which each Defendants are obligated to indemnify Plaintiffs or to contribute;
5. For attorneys' fees pursuant to written agreement entered into by Defendants and the Insureds;

6. For interest at the allowable legal rate from the due date;

7. For costs of suit incurred herein; and,

8. For such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: June 11, 2008

BALESTRERI, PENDLETON & POTOCKI

BY: ______________________

THOMAS BALESTRERI
SCOTT SILBER
MATTHEW STOHL
Attorneys for Plaintiffs
GREAT AMERICAN INSURANCE COMPANY, and GREAT AMERICAN INSURANCE COMPANY OF NEW YORK, formerly known as AMERICAN NATIONAL FIRE INSURANCE COMPANY

EXHIBIT A

EXHIBIT "A"

THE AMERICAN INSTITUTE OF ARCHITECTS

DRAFT DATE: August 22, 1991

FORM OF AGREEMENT A111

AIA Document A111

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is the

COST OF THE WORK PLUS A FEE

with or without a Guaranteed Maximum Price

1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the day of in the year of Nineteen Hundred and Ninety-one

BETWEEN the Owner: *(Name and address)*

MARINA VILLAGE ASSOCIATES
12780 High Bluff Drive, Suite 200
San Diego, CA 92130
Attn: Michael Briozere

and the Contractor: *(Name and address)*

ROLL CONSTRUCTION
7330 Engineer Road
San Diego, CA 92111-1464

the Project is: *(Name and address)*

CITYFRONT TERRACE
Market and Union Streets
San Diego, CA

the Architect is: *(Name and address)*

Prime Architect
Solomon, Cordwell, Buenz & Associates, Inc.
57 West Grand Avenue, Suite 800
Chicago, IL 60610
Attn: Steven Weiss

Rehabilitation Architect
Architect, Milford Wayne Donaldson, Inc.
846 Fifth Ave., Suite 300
San Diego, CA 92101
Attn: Wayne Donaldson

The Owner and Contractor agree as set forth below.

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UP086039

Exhibit A

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ARTICLE 1

THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 16. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

EDIT See Amendment "A", Paragraph 1.2 (all references to "Amendment A" or to "EDIT" refer to Amendment A described in Paragraph 14.3 below).

ARTICLE 2

THE WORK OF THIS CONTRACT

2.1 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Construction of the CityFront Terrace condominium project including reconstruction of the existing Citrus Soap Factory Building into condominium units complete with related site work and interior finishes, including the construction and completion of a new 13-story condominium apartment building (the existing Citrus Soap Factory Building consists of a 4-story existing building), together containing approximately 462,000 square feet, exclusive of a basement and sub-basement parking facility containing approximately 152,800 square feet. The Owner's property is bounded by Market Street, Union Street, Columbia Street and MTDB Right of Way in San Diego, California.

ARTICLE 3

RELATIONSHIP OF THE PARTIES

3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with requirements of the Contract Documents.

EDIT See Amendment "A", Paragraph 3.1.

ARTICLE 4

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

EDIT **4.1** The date of commencement is the date from which the Contract Time of Subparagraph 4.2 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. See Amendment "A", Article 4.1.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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4.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

EDIT〉 4.2.2

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

Refer to Supplementary General Conditions to AIA 201.

ARTICLE 5
CONTRACT SUM

5.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Contractor's Fee determined as follows:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and explain how the Contractor's Fee is to be adjusted for changes in the Work.)

5.1.1 In consideration of the performance of this Contract, the Owner agrees to pay the Contractor, as compensation for his services, the Contractor's Fee in an amount equal to three percent (3%) of the Cost of the Work as defined in Article 7 BUT will be expressly set as a lump sum by the Excavation Change Order and the Construction Change Order.

5.1.2 For changes in the Work, the Contractor's Fee shall be adjusted as follows: All Scope of Work changes will be based upon the direct cost of the Work required plus three percent (3%) markup for Contractor's Fee. The markup for Contractor's Fee will only apply if the total of all increases in Scope of Work changes have reached a total of One Million Dollars ($1,000,000.00). Similarly, if a Scope of Work change results in a direct cost credit which together with all previous Scope of Work changes have cumulatively reached a total of One Million Dollars ($1,000,000.00), the three percent (3%) Contractor's Fee associated with same will also be credited.

5.2 GUARANTEED MAXIMUM PRICE (IF APPLICABLE)

5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Dollars ($), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

In the event the Cost of the Work as defined in Article 7 shall exceed the Guaranteed Maximum Price, as adjusted by change order, such excess shall be borne solely by the Contractor. In the event that the final Cost of the Work as defined in Article 7, plus the Contractor's Fee as set forth in Article 5, is less than the Guaranteed Maximum Price at the time of the final Certificate of Payment, twenty-five percent (25%) of the resulting difference ("Savings") will be paid to the Contractor as an additional Incentive Fee for efficient performance. Final accounting of all costs, subsequent to final payment, shall incorporate the Owner's participation of seventy-five percent (75%) of the Savings.

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5.2.2 The Guaranteed Maximum Price is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates, but only if a Guaranteed Maximum Price is inserted in Subparagraph 5.2.1. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

Exhibits to be attached to Construction Change Order or other approved Change Order.

5.2.3 The amounts agreed to for unit prices, if any, are as follows:

(State unit prices only if a Guaranteed Maximum Price is inserted in Subparagraph 5.2.1.)

Exhibits to be attached to Construction Change Order or other approved Change Order.

ARTICLE 6
CHANGES IN THE WORK

6.1 CONTRACTS WITH A GUARANTEED MAXIMUM PRICE

6.1.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of the General Conditions.

6.1.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of the General Conditions and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.1.3 In calculating adjustments to this Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 5.1 of this Agreement.

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~~6.2 CONTRACTS WITHOUT A GUARANTEED MAXIMUM PRICE~~

~~6.2.1 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the~~ Work, and the Contractor's Fee shall be adjusted as provided in Paragraph 5.1.

6.3 ALL CONTRACTS

6.3.1 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established ~~for the original Work.~~

ARTICLE 7

COSTS TO BE REIMBURSED

7.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.1.1 LABOR COSTS

EDIT 7.1.1.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

EDIT ~~7.1.1.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's agreement.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time.)~~

EDIT ~~7.1.1.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

EDIT 7.1.1.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Clauses 7.1.1.1 through 7.1.1.3.

7.1.2 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.1.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

7.1.3.2 Costs of materials described in the preceding Clause 7.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.1.4 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

EDIT 7.1.4.3 Costs of removal of debris from the site.

EDIT 7.1.4.4 Costs of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.1.4.5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling outside San Diego in discharge of duties connected with the Work, as approved by the Owner in advance.

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7.1.5 MISCELLANEOUS COSTS

EDIT **7.1.5.1** That portion directly attributable to this Contract of premiums for insurance and bonds.

7.1.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Contractor is liable.

7.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.1.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of the General Conditions or other provisions of the Contract Documents and which do not fall within the scope of Subparagraphs 7.2.2 through 7.2.4 below.

7.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or of a Guaranteed Maximum Price, if any, and provided that such royalties, fees and costs are not excluded by the last sentence of Subparagraph 3.17.1 of the General Conditions or other provisions of the Contract Documents.

7.1.5.6 Deposits lost for causes other than the Contractor's fault or negligence.

7.1.6 OTHER COSTS

7.1.6.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

EDIT **7.2 EMERGENCIES; REPAIRS TO DAMAGED, DEFECTIVE OR NONCONFORMING WORK**

The Cost of the Work shall also include costs described in Paragraph 7.1 which are incurred by the Contractor:

7.2.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.3 of the General Conditions.

7.2.2 In repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Contractor, provided such damage or improper execution did not result from the fault or negligence of the Contractor or the Contractor's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Contractor.

7.2.3 In repairing damaged Work other than that described in Subparagraph 7.2.2, provided such damage did not result from the fault or negligence of the Contractor or the Contractor's personnel, and only to the extent that the cost of such repairs is not recoverable by the Contractor from others and the Contractor is not compensated therefor by insurance or otherwise.

7.2.4 In correcting defective or nonconforming Work performed or supplied by a Subcontractor or material supplier and not corrected by them, provided such defective or nonconforming Work did not result from the fault or neglect of the Contractor or the Contractor's personnel adequately to supervise and direct the Work of the Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the Contractor from the Subcontractor or material supplier.

EDIT

ARTICLE 8
COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Clauses 7.1.1.2 and 7.1.1.3 or as may be provided in Article 14.

EDIT **8.1.2** Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Clause 7.1.4.2.

8.1.6 Except as provided in Subparagraphs 7.2.2 through 7.2.4 and Paragraph 13.5 of this Agreement, costs due to the fault or negligence of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

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ARTICLE 9

DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts which accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10

SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids; however, if a Guaranteed Maximum Price has been established, the Owner may not prohibit the Contractor from obtaining bids from others. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted; then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the payment provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11

ACCOUNTING RECORDS

11.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12

PROGRESS PAYMENTS

12.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

12.3 Provided an Application for Payment (certified by the Contractor) is received by the Architect not later than the 10th day of a month, the Owner shall make payment to the Contractor not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 20 days after the Architect receives the Application for Payment.

EDIT) ~~12.4 With each Application for Payment the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices~~ with check vouchers attached, and any other evidence required by the Owner or Architect ~~to demonstrate that cash disbursements~~ already made by the Contractor on account of the Cost ~~of the Work equal or exceed~~ (1) progress payments already received by the Contractor; less (2) that ~~portion of those payments~~ attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the ~~present Application for Payment, plus (4) retainage provided in Subparagraph 12.5.4, if any, applicable to prior progress payments.~~

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12.5 CONTRACTS WITH A GUARANTEED MAXIMUM PRICE

12.5.1 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.5.2 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.5.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

12.5.3.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

12.5.3.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

12.5.3.3 Add the Contractor's Fee, less retainage of TEN percent (10. %). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

12.5.3.4 Subtract the aggregate of previous payments made by the Owner.

12.5.3.5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

12.5.3.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

EDIT〉 **12.5.4** Additional retainage, if any, shall be as follows:

(If it is intended to retain additional amounts from progress payments to the Contractor beyond (1) the retainage from the Contractor's Fee provided in Clause 12.5.3.3, (2) the retainage from Subcontractors provided in Paragraph 12.7 below, and (3) the retainage, if any, provided by other provisions of the Contract, insert provision for such additional retainage here. Such provision, if made, should also describe any arrangement for limiting or reducing the amount retained after the Work reaches a certain state of completion.)

~~**12.6 CONTRACTS WITHOUT A GUARANTEED MAXIMUM PRICE**~~ (Does not apply)

~~**12.6.1** Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period~~ covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

12.6.2 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

12.6.2.1 Take the Cost of the Work as described in Subparagraph 12.6.1.

12.6.2.2 Add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding Clause 12.6.2.1 at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding Clause bears to a reasonable estimate of the probable Cost of the Work upon its completion.

12.6.2.3 Subtract the aggregate of previous payments made by the Owner.

12.6.2.4 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.4 or to substantiate prior Applications for Payment or resulting from errors subsequently discovered by the Owner's accountants in such documentation.

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~~[illegible] Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.~~

~~[illegible] Additional retainage, if any, shall be as follows:~~

12.7 Except with the Owner's prior approval, payments to Subcontractors included in the Contractor's Applications for Payment shall not exceed an amount for each Subcontractor calculated as follows:

12.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion in the Subcontractor's schedule of values, less retainage of TEN percent (10 %). Pending final determination of amounts to be paid to the Subcontractor for changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Subcontract Sum has not yet been adjusted by Change Order.

12.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of TEN percent (10 %).

12.7.3 Subtract the aggregate of previous payments made by the Contractor to the Subcontractor.

12.7.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment by the Owner to the Contractor for reasons which are the fault of the Subcontractor.

12.7.5 Add, upon Substantial Completion of the entire Work of the Contractor, a sum sufficient to increase the total payments to the Subcontractor to ONE HUNDRED percent (100 %) of the Subcontract Sum, less amounts, if any, for incomplete Work and unsettled claims; and, if final completion of the entire Work is thereafter materially delayed through no fault of the Subcontractor, add any additional amounts payable on account of Work of the Subcontractor in accordance with Subparagraph 9.10.3 of the General Conditions.

(If it is intended, prior to Substantial Completion of the entire Work of the Contractor, to reduce or limit the retainage from Subcontractors resulting from the percentages inserted in Subparagraphs 12.7.1 and 12.7.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Until the Work is fifty percent (50%) complete, the Owner shall pay ninety percent (90%) of the amount requested in each Application for Payment within each line item of the Schedule of Values (as described in the Supplementary Conditions). Thereafter, amounts included within a Progress Payment within a particular line item of the Schedule of Values shall be made up to one hundred percent (100%) of the amount requested; provided, however, that any such reduction in retainage shall be made only if in the sole and absolute discretion of the Owner and the Architect*

The Subcontract Sum is the total amount stipulated in the subcontract to be paid by the Contractor to the Subcontractor for the Subcontractor's performance of the subcontract.

12.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

12.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 12.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

*satisfactory progress is being made in the Work. Retention related to a line item Change Order amount shall be in accordance with the above as related to the progress of the Change in the Work.

ARTICLE 13
FINAL PAYMENT

13.1 Final payment shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct defective or nonconforming Work, as provided in Subparagraph 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Pay-

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ment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

13.2 The amount of the final payment shall be calculated as follows:

13.2.1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee; but not more than the Guaranteed Maximum Price, if any.

13.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of the General Conditions or other provisions of the Contract Documents.

13.2.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the Owner.

13.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Paragraph 13.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the General Conditions. The time periods stated in this Paragraph 13.3 supersede those stated in Subparagraph 9.4.1 of the General Conditions.

13.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

13.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

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ARTICLE 14
MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

EDIT) **14.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

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14.2 Other provisions:

See "Amendment A" Amendment to the 1987 Edition of AIA Document A111.

ARTICLE 15

TERMINATION OR SUSPENSION

15.1 The Contract may be terminated by the Contractor as provided in Article 14 of the General Conditions; however, the amount to be paid to the Contractor under Subparagraph 14.1.2 of the General Conditions shall not exceed the amount the Contractor would be entitled to receive under Paragraph 15.3 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

15.2 If a Guaranteed Maximum Price is established in Article 5, the Contract may be terminated by the Owner for cause as provided in Article 14 of the General Conditions; however, the amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of the General Conditions shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount the Contractor would be entitled to receive under Paragraph 15.3 below.

15.3 If no Guaranteed Maximum Price is established in Article 5, the Contract may be terminated by the Owner for cause as provided in Article 14 of the General Conditions; however, the Owner shall then pay the Contractor an amount calculated as follows:

15.3.1 Take the Cost of the Work incurred by the Contractor to the date of termination.

15.3.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

15.3.3 Subtract the aggregate of previous payments made by the Owner.

The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Subparagraph 15.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 15, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

15.4 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price, if any, shall be increased as provided in Subparagraph 14.3.2 of the General Conditions except that the term "cost of performance of the Contract" in that Subparagraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Paragraphs 5.1 and 6.3 of this Agreement.

ARTICLE 16

ENUMERATION OF CONTRACT DOCUMENTS

16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

16.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A111, 1987 Edition.

16.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

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16.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
Doc. No. 00800-Supplementary Conditions		

16.1.4 The Specifications are those contained in the Project Manual dated as in Paragraph 16.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages

Exhibit to be added by Construction Change Order or other approved Change Order.

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16.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

Exhibit to be added by Construction Change Order or other approved Change Order.

16.1.6 The addenda, if any, are as follows:

Number	Date	Pages

None.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

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Exhibit A
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10.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Letter of Intent (Exhibit A to Amendment A)

Construction Schedule (Exhibit B to Amendment A)

Salary and Benefits Schedule (Exhibit C to Amendment A)

Subcontract Forms (Exhibit D to Amendment A)
1) Application for Payment
2) Trade Payment Breakdown
3) Subcontract Agreement K-100A

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER: MARINA VILLAGE ASSOCIATES

See Amendment "A"

(Signature)

(Printed name and title)

CONTRACTOR: TKCC, INC., A CALIFORNIA CORPORATION, DBA ROLL CONSTRUCTION LICENSE #491751

(Signature)

See Amendment "A"

(Printed name and title)

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Exhibit A

TRACK 2 EXHIBIT 179
DATE 11-8-05
WITNESS: Hussey Vol. I
15 PAGE(S)

AMENDMENT "A"
Amendment to the 1987 Edition
of AIA Document A111

THIS AMENDMENT is attached to and incorporated in that certain document entitled "Standard Form of Agreement Between Owner and Contractor (AIA Document A111, 1987)" (the "Contract"), as the parties desire to amend said document. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of this Amendment and those of the Standard Form A111, this Amendment shall govern. The terms and provisions of the Standard Form A111 are hereby amended as follows:

Article 1

Add subparagraphs as follows:

1.2 Owner has entered into that certain Owner Participation Agreement by and between Redevelopment Agency of the City of San Diego and Owner dated October 12, 1990 filed as Document No. 1776 in the Office of the Redevelopment Agency of San Diego, California on December 5, 1990 ("Participation Agreement") to assist in the orderly development of the Project. In accordance with Section 310 of the Participation Agreement, Contractor agrees that it shall not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, religion, national origin or ancestry. In addition, Contractor shall comply with the "Equal Opportunity Program" and the "Equal Employment Opportunity" provisions of the Participation Agreement. Except for the foregoing matters, Contractor shall have no obligations with respect to the Participation Agreement.

1.3 Owner has entered into that certain Prime Construction Contract ("Prime Construction Contract") with Kabuto Decom, Inc., a Japanese corporation ("Prime Contractor"). The Contract Documents shall be subject to the terms and conditions of the Prime Construction Contract other than Sections 1(d) and 3. Notwithstanding the Prime Construction Contract, Contractor shall be the general contractor for the Project.

1.4 Prior to the date of this Contract and pursuant to that certain Letter of Intent from Owner to Contractor dated July 29, 1991 ("Letter of Intent"), Contractor has performed certain site preparation work related to the Property (the "Prior Work"). A copy of the Letter of Intent is attached hereto as Exhibit A. Except with respect to the descriptions of the Excavation Change Order and the Construction Change Order, this Contract shall supersede and cancel in all respects the Letter of Intent and shall govern the obligations of the parties relating to all Work to be performed from and after the date hereof. Owner will pay Contractor for Work performed pursuant to the Letter of Intent

August 26, 1991

until such time as the Excavation Change Order is executed, at which time the terms of the Contract shall control in all events. Notwithstanding the foregoing, the Letter of Intent describes the two anticipated Change Orders to the Contract Documents, identified as the Excavation Change Order and the Construction Change Order. As used in these Contract Documents, the term "Excavation Change Order" shall mean and refer to an approved Change Order intended to expand the scope of Work to include the Site Preparation Work as described in the Letter of Intent and Excavation Work on the Project Site. The term "Construction Change Order" will mean an approved Change Order including a detailed estimate of the Total Cost of the Work ("Estimate") for the entire Project and which shall expand the scope of Work to include the entire Project. If Contractor's estimate of the total Cost of the Work included as part of the proposed Construction Change Order is not acceptable to Owner, or for the sole convenience of Owner, Owner may terminate the Contract effective upon completion of the portion of the Work to be described in the Excavation Change Order with no further obligation to Contractor except for payment of costs plus the applicable portion of the Contractor's Fee for work completed through such termination date. Sections II and III of the Letter of Intent ("EXCAVATION" and "CONSTRUCTION", respectively) are hereby incorporated by reference to the extent that they are not inconsistent with the terms and conditions of the Contract Documents. Contractor hereby subordinates any and all liens, whether mechanic's, materialmen or otherwise, arising from or in any way related to the Prior Work to the lien of any construction financing which is secured by a lien on the title of Owner to the Project. Such subordination shall be specifically evidenced by execution of a specific subordination agreement in form and content satisfactory to Owner, its construction lender and to Contractor, to be executed and delivered by Contractor within five (5) days of a request therefore by Owner. Contractor acknowledges its agreement to subordinate any and all liens relating to the Prior Work is a material inducement to Owner to enter into this Contract and Owner is relying on such subordination.

ARTICLE 3

RELATIONSHIP OF THE PARTIES

3.1 Insert in the second line of Paragraph 3.1 between the words "Architect" and "and" the words "and the consultants retained by Owner". Add as the last sentence the following: "Except as is expressly authorized herein, the Contractor has no right or authority of any kind to act as the representative of or on behalf of the Owner, and is not an agent of Owner."

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ARTICLE 4

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Delete paragraph 4.1 in its entirety and replace with the following:

4.1 The Work to be performed under this Contract shall be commenced upon receipt of confirmation of Owner's financing and a valid building permit and within ten (10) days of a written notice from Owner to proceed. The Work shall be substantially completed as shown on the Construction Schedule attached as Exhibit B, within five hundred sixty-seven (567) days after the Commencement Date ("Substantial Completion Date") as may be modified in a Construction Schedule to become part of this Contract pursuant to an approved Change Order, including, but not limited to, the Excavation Change Order and the Construction Change Order. The foregoing schedule for Substantial Completion allows for fifteen (15) days during which Contractor is prevented from performing the Work due to rain or other adverse weather conditions ("Rain Days"). Contractor shall not be entitled to any extensions of time under the Contract Documents due to delays caused by rain or other adverse weather conditions unless and only to the extent that more than fifteen (15) Rain Days occur. The Construction Schedule will contain dates for the substantial completion of particular components of the Project, including the model condominiums and the Soap Factory Building. After the Contract Time has been established, the Contract Time may only be extended pursuant to the provisions of General Conditions Paragraph 8.3.

Delete paragraph 4.2 in its entirety and replace with the following:

4.2 If the Substantial Completion Date is delayed Owner will suffer damages. In such event, Owner will be entitled to pursue whatever remedies it may have at law or in equity.

ARTICLE 5

CONTRACT SUM

5.1.3 The Excavation Change Order shall be drafted and submitted for consideration of Owner and Contractor. The Estimate shall be delivered by Contractor to Owner no later than forty-five (45) days after Owner delivers to Contractor ninety-five percent (95%) complete Contract Documents, which occurred on August 5, 1991. The Estimate shall serve as the basis for the prompt preparation of the proposed Construction Change Order.

ARTICLE 7

COSTS TO BE REIMBURSED

In paragraph 7.1.1.1, Delete the period after "workshops", add a comma, and add the following:

...in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage and benefits schedule agreed upon by the Owner and Contractor, as per Exhibit C, Salary and Benefits Schedule .

Delete paragraph 7.1.1.2 in its entirety and replace with the following:

7.1.1.2 Salaries and compensation paid for Contractor's personnel when stationed at the principal office, field office, at shops, or on the road, only when involved in the direct management of the Project and in purchasing or expediting the production or transportation of materials or equipment, or whatever capacity employed for their time spent on the Work.

Delete paragraph 7.1.1.3 in its entirety.

In paragraph 7.1.1.4 Delete reference to Clause 7.1.1. and add the following:

Reimbursement for the costs to be incurred by Contractor as contemplated by this Paragraph 7.1.1.4 shall be at the rate of thirty-three percent (33%) (the "reimbursement factor") of the salaries and compensation paid by Contractor and included in the Cost of the Work under Paragraph 7.1.1.2.

In paragraph 7.1.4.3, After the word "removal" and before the word "of", add "and disposal".

In paragraph 7.1.4.4, Delete period at end of sentence and add the following:

...including costs of reproduction of drawings,specifications, and other documents necessary for the execution of the work and utility consumption costs, including, but not limited to, water, steam, gas, oil, electricity, snow removal, winterizing, and temporary toilets.

In paragraph 7.1.5.1, Delete period at end of sentence and add the following:

...and all insurance deductibles attributable to a loss not caused by the negligence of the Contractor. Contractor's liability insurance shall be included at the rate of .0055 times the total Cost of the Work.

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In paragraph 7.1.6, Add the following:

7.1.6.2 To the extent required or approved in advance by Owner, all costs and fees associated with altering of public utility, protection of adjoining property, and rental property for storage of materials to be incorporated in the Work.

Add a paragraph 7.3:

7.3 Only with the prior consent of the Owner, the Cost of the Work shall include the cost of legal fees and expenses reasonably necessary and properly incurred in connection only with labor disputes, negotiations, liens or other matters between Contractor and labor unions, suppliers or Subcontractors where such labor disputes, negotiations, liens or other matters are regional or industry-wide in nature, are not the result of Contractor acting in a negligent, bad faith or other culpable fashion, and are not the result of Contractor's wrongful or unexcused failure to pay or discharge its obligations hereunder.

ARTICLE 8

In paragraph 8.1, Add the following:

8.1.1.1 The cost of legal fees and expenses, including those involved in handling any labor disputes, negotiations, liens or other matters between Contractor and suppliers, Subcontractors, subcontractor sureties and labor unions which are not included within the Cost of the Work pursuant to Section 7.3 above.

ARTICLE 12

PROGRESS PAYMENTS

In paragraph 12.1, add the following at the end thereof:

Pursuant to the Prime Construction Contract, all payments to Contractor shall be disbursed by Prime Contractor to Contractor; provided, however, that Owner's payment of any funds to the Prime Contractor shall not excuse Owner's obligations to make Progress Payments when and as required by the Contract Documents.

In paragraph 12.3, add the following:

12.2.3.1 Payments by Owner shall be wired to:

Wells Fargo Bank
Orange County Airport Branch
4590 MacArthur Boulevard
Newport Beach, California 92660

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For the account of:

Koll Construction
No. 4692047772
(Have the Bank notify Jim Summerford at 714/833-3030)

Job Name & Job No.
[AS NOTED ON PAGE 1 OF THE CONTRACT]

Delete paragraph 12.4 in its entirety and replace with the following:

12.4.1 With each Application for Payment the Contractor shall provide (i) a statement certifying (notarized if required by the Owner) that the Work has progressed as indicated, (ii) a statement that all amounts shown as previous payments have been paid and all amounts of the current request will be paid, (iii) a fully executed conditional lien release from the Contractor for the Work which is the subject of the current Application for Payment, (iv) a fully executed unconditional lien release from the Contractor for the Work which was the subject of the prior month's Application for Payment if the prior month's disbursement has been made, (v) fully executed unconditional lien releases from all affected Subcontractors for the Work which was the subject of the Application for Payment for the month before the prior month if the prior month's disbursement was not made at least ten (10) days prior to the date of the next Application for Payment, and for the prior month if the prior month's disbursement has been made at lease ten (10) days prior to the date of such Application for Payment, (vi) fully executed conditional lien releases from all affected Subcontractors for the Work which was the subject of the Application for Payment for the prior month if the prior month's disbursement was not made ten (10) days prior to the date of such Application for Payment, and (vii) waivers and such other affidavits, certificates, information, data and schedules from all Subcontractors and materialmen performing work on the Project. Contractor's accounting records shall be available for audit by Owner to demonstrate the current Application for Payment made on account of the Cost of the Work represents the value of work complete less any prior Applications for Payment by the Contractor.

12.4.2 As a condition to the payment of each Progress Payment, Contractor shall have delivered to Owner such documentation as the title insurance company engaged by Owner deems reasonably necessary to enable the title insurer to issue an endorsement to the policy of title insurance insuring Owner and Owner's construction lender, if any.

12.4.3 Thirty-five (35) days after Substantial Completion, any unpaid balance plus the remaining retention will be paid to the Contractor. Should minor items remain to be completed, the Contractor and the Owner or Architect shall list such items and the

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Contractor's written acceptance of such list shall constitute his unconditional promise to complete said items within a reasonable time thereafter. The Owner may retain a sum equal to one hundred fifty percent (150%) of the estimated cost of completing any unfinished items, as reasonably estimated by the Owner and the Architect. Thereafter, Owner shall pay to the Contractor monthly the amount retained for incomplete items as each of said items is completed.

Add the following:

12.5.4 During the course of construction, each Application for Payment shall be subject to a retention as indicated in this Agreement, except for those items of Work: (i) agreed upon between Owner and Contractor in writing or (ii) where a lesser retention is required by law. In addition, subject to the approval of the Owner and Lender (which approval may be given or withheld in Owner's sole and absolute discretion), the retention requirements may be modified where full or extended retention is not warranted.

ARTICLE 13

FINAL PAYMENT

13.6 Notwithstanding any other provision contained in this Agreement or the Contract Documents, final payment will not be due or owing until Contractor has delivered to Owner such evidence of full payment and unconditional lien releases from all Subcontractors (with the exception of retentions and final payments which are to be paid out of the final payment of the Owner to the Contractor) in the absence of any liens generated by the Work as may be required by the Owner, Owner's construction or permanent lender or a title insurance carrier.

ARTICLE 14

MISCELLANEOUS PROVISIONS

Add the following:

14.2.1 In the event that any payments are not made by the Owner to the Contractor within twenty (20) days after the due date thereof in accordance with the Contract Documents, said payments shall bear interest from the date twenty (20) days after the payment was due until paid at the rate equal to the lesser of (i) of five percent (5%) per annum over the discount rate of the Federal Reserve Bank San Francisco prevailing on the 25th day of the month preceding the date that payment was due or (ii) eleven percent (11%) per annum. The fact that the Contractor is charging interest in accordance with this provision, shall not constitute waiver by Contractor of any other rights or remedies provided for herein by reason of Owner's default in making such payments including specifically, but not limited to, Contractor's rights to terminate this Contract for nonpayment.

14.3.1 Destruction of the Work by Fire, Elements, etc.,

(a) In the event the Work herein be wholly or partially damaged or destroyed by war, fire, storm, lightning, flood, earthquake, settlement or defective soil, expansion or contraction, cracking or deflection, tidal wave, mob violence, vandalism or other casualty before the final completion of said Work, the Contractor, upon written instructions from the Owner, shall proceed to replace and/or repair said Work in accordance with the plans. In this event, the provisions of this Agreement shall remain in full force and effect, except that the Guaranteed Maximum Price stated in Article 5 shall be increased by the total cost of removing and/or replacing all damaged and/or destroyed work, the time for completion shall be extended and the Contractor's fee shall be increased. All such increases shall be provided in a Change Order proposal for the approval of Owner and the Architect.

(b) In the event of substantial damage or destruction to the Work by any cause, the Owner may, upon giving written notice to the Contractor, elect to terminate this Agreement. In such case, the Owner shall pay the Contractor pursuant to Paragraph 14.4.3 of the Supplementary General Conditions.

(c) Owner will obtain, prior to the commencement of the Work, Flood, Fire and Extended Coverage Insurance, including "All risk" insurance for malicious mischief and vandalism and such other additional insurance as he may desire to insure those casualties enumerated in Paragraph (a) upon the Work and upon all materials intended to become a part of the Work, whether on-site, temporarily stored elsewhere or in transit. Except as specifically set forth in the Contract Documents, Owner will be responsible for the amounts of deductibles in such additional insurance and for costs not covered by said insurance. Owner may also obtain, in its own discretion, insurance for damage caused by earthquakes. A copy of each policy shall be submitted to the Contractor for its review and approval, which approval will not be unreasonably withheld. The Contractor and all subcontractors shall be named as "Additional Insureds" and each policy shall include a Wavier of Subrogation and Permission to Occupy Endorsement.

14.3.3 DAMAGE AND INDEMNITY: Notwithstanding any of the provisions in the Contract to the contrary, Contractor shall in no event have any responsibility, nor be liable to Owner, for damages or delays resulting from soil subsidence (which shall not include damages or delays resulting from or related to improper construction methods or techniques) or the presence of pollutants, gaseous emissions, asbestos, hazardous or toxic substances prior to the commencement of Work as described in Paragraph 4.1 above, or where caused by Owner or other contractors separately engaged by Owner, whether subsurface or otherwise, unless and to the extent caused by the negligence or willful misconduct of Contractor. Owner will fully hold harmless, indemnify and defend Contractor from and against any and all claims or actions resulting from the presence prior to the commencement of Work as described in Paragraph 4.1 above and/or caused by Owner or other contractors separately engaged by Owner in connection with the Project, of any such pollutants, gaseous emissions, asbestos, hazardous and/or toxic substances, whether subsurface or otherwise.

14.3.4 ALLOWANCE. Any allowances included in this Contract include the cost of material, equipment and labor. When the actual cost of any allowance item is established, it will include the cost of material, equipment and labor.

14.3.5 LICENSE. Contractor represents and warrants it is a duly licensed contractor under the laws of the State of California and that its contractor's license number is 491751. Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Registrar of the Board whose address is:

Contractor's State License Board
3132 Bradshaw Road
Sacramento, California 95826

14.3.6 SERVICE OF NOTICES. All notices or other communications required or permitted hereunder shall be in writing, and shall be sent certified mail, postage paid, return receipt requested, or nationally recognized over-night delivery service and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, four (4) business days after the date of posting by the United States post office; or (iii) if given by over-night courier service marked for next business delivery, the next business day.

14.3.7 Any written notice hereunder directed to Contractor may be served personally on its project manager at the job site, or by certified mail addressed to Contractor at Koll Construction (address indicated below).

14.3.8 Any written notice hereunder directed to Owner may be served personally on the Owner's representatives on the job site, or by certified mail address of the Owner at the address indicated below.

14.3.9 Any written notice hereunder directed to Architect may be given as set forth herein to the address indicated below.

CONTRACTOR: Koll Construction
7330 Engineer Road
San Diego, CA 92111

Attn: Gene Hussey

With a copy to: Koll Construction
3020 Old Ranch Parkway, Suite 250
Seal Beach, California 90740-2751

Attn: Victor D. Laidlaw

OWNER: (As Noted on Contract, Page 1)

ARCHITECT: (As Noted on Contract, Page 1)

14.3.10 Contractor hereby agrees to consent in writing to the assignment by Owner of its interest in the Contract Documents to Owner's construction lender, if any. In connection with the financing of the Project, Contractor and all Subcontractors must execute and deliver, and (if appropriate) acknowledge, any and all instruments reasonably required by Owner or any lender, including, but not limited to, subordinating any rights, interests, and claims under the Contract Documents, subcontracts, at law, or otherwise, to the liens, benefits, rights and privileges of any lender. The consent of Contractor set forth in this Subparagraph 14.3.10 shall be subject to Contractor's approval of the language requested in any such instrument acknowledging such assignment, which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor and Owner agree that the procedures for payment set forth in the Contract Documents, the insurance requirements and other provisions thereof are subject to modification if requested by Owner's construction lender or as may be necessary for Owner to comply with the terms and provisions of its construction loan.

14.3.11 The Contractor hereby subordinates all Contractor's, laborer's, mechanics, materialmen's and other similar liens that it may have or acquire under the Contract Documents or otherwise as to the Work or the Site to the lien and security interest securing payment of sums now or hereafter borrowed by Owner from any lender. At the request of Owner, the Contractor shall execute such additional documents as may be requested from time to time by the Owner or any lender to evidence the provisions hereof, and shall cause subcontractors and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

14.3.12 Except as set forth in Paragraph 1.4 above, the terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to such terms as are included in the Contract Documents and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings including, but not limited to, that certain Letter of Intent from Owner to Contractor dated July 29, 1991. Additionally, the parties hereby expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that the Contract Documents constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the Contract Documents. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the parties hereto.

14.3.13 Notwithstanding anything in the Contract Documents to the contrary, the Owner shall have, at all reasonable times, the right to enter the Project for the purpose of conducting marketing activities and observing the Work, and Contractor shall provide for such access.

14.3.16 If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the terms hereof, the losing or defaulting party shall pay to the prevailing party the costs and expenses incurred in connection with the prosecution or defense of such action, including reasonable attorneys' fees.

14.3.17 Contractor agrees that it will not, without the prior written approval of the Owner, (i) publicize the fact that the Owner has entered into the Contract Documents, or (ii) disclose, confirm or deny any details of the Contract Documents. Contractor agrees that it will not use Owner's name in connection with Contractor's publicity with respect to the Project without the prior review and written approval for each type of marketing use by Owner. Contractor shall also insert the terms of this provision in all contracts and/or agreements executed in connection with the services to be performed under the Contract Documents and shall pass such provision to its subcontractors under such contracts and/or agreements.

14.3.18 Contractor shall not assign the whole or any portion of his interest under the Contract Documents or any payments due or to become due Contractor hereunder nor subcontract any of his obligations hereunder without first obtaining in each instance the prior written consent of Owner. No assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, shall be valid or effective without such prior written consent of Owner or, even if Owner consents, shall operate to release Contractor from its obligations hereunder. Should Contractor attempt to make or suffer to be made any such assignment, except as aforesaid, Owner may, at its option, terminate the agreements contained within the Contract Documents upon written notice to Contractor. Should Owner consent to any such assignment, such consent shall not constitute a waiver of any of the restrictions of this Paragraph and the same shall apply to each successive assignment hereunder, if any. If Contractor requests Owner's consent to an assignment Contract to an affiliate of Contractor, Owner shall not unreasonably withhold its consent. Owner may assign its interest in the Contract Documents with the prior written consent of Contractor, which consent shall not be unreasonably withheld. Contractor's consent to an assignment by Owner shall not be required in the event that Owner is assigning its interest in the Contract Documents to an affiliate of Owner. Notwithstanding the foregoing, the assignment by Owner of its interest in the Contract Documents to Owner's construction lender shall be pursuant to Subparagraph 14.3.10 above. As used in this paragraph, the term "affiliate" shall mean and refer to any parent or subsidiary of the designated entity or a partnership composed solely of all or some of the foregoing.

14.3.19 The Owner and Contractor, with the assistance of the Architect and other consultants, shall negotiate in good faith to develop an "after market" warranty program specifically designed to reduce the exposure to disputes with the condominium Home Owners' Association or other entities. The purpose of this program shall be to furnish responsive, proactive management of home owner concerns and complaints. If such a program is agreed upon, it may include a sum identified by Change Order and set aside from the Owner's construction financing to fund this requirement. If such program is established, Contractor shall implement corrective actions under this warranty program and seek reimbursement from this fund. The amount and administration of this fund shall be mutually agreed to by the Ownerand Contractor. Owner and Contractor shall enter into an agreement incorporating the final form of such program no later than the date of the Construction Change Order.

14.3.20 The Owner will designate an authorized representative for the purposes of authorizing additional work, executing Change Orders, approving payment requests, etc.

14.3.21 The contingency line item to be shown as part of the Guaranteed Maximum Price may be used at the reasonable discretion of the Contractor for unforeseen, unanticipated, or unestimated costs that occur within the original scope of the Project as defined by the Contract Documents. The contingency shall not be used for costs resulting from the sole fault or negligence of the Contractor, any Subcontractor and anyone for whose acts either of them may be liable nor for changes in the scope or duration of the Project, as also described in Paragraph 8.3.4 of the Supplementary Conditions. The contingency amount remaining after issuance of the final Certificate for Payment shall be subject to the Owner/Contractor savings participation described in Paragraph 5.2.1 above.

14.3.22 The form of subcontract to be used by Contractor for all Subcontracts is attached hereto as Exhibit D and is incorporated herein by reference.

14.3.23 Contractor hereby agrees to indemnify, defend with counsel reasonably acceptable to Prime Contractor and hold harmless Prime Contractor, its officers, directors, agents, independent contractors and employees from and against, and to the extent permitted by law, Contractor hereby waives any and all claims it or any of its successors in interest may now or at any time hereafter have against Prime Contractor or Prime Contractor's officers, directors, agents, independent contractors or employees in connection with, any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including without limitation reasonable attorneys' fees), arising directly or indirectly, in whole or in part, out of or in connection with the Prime Construction Contract or the Services (as defined in the Prime Construction Contract), or any matter related to the Prime Construction Contract or the Services, or any matter related to the Project, the Project Work (as defined in the Prime Construction Contract), the acts or omissions of the Prime Contractor or any other contractors retained by Owner or Contractor, the conduct of the business of Owner or any action taken in connection with the Prime Construction Contract or the Services by Prime Contractor or any officer, director, agent, independent contractor or employee of Prime Contractor including, without limitation the negligence of Prime Contractor or any officer, director, agent, independent contractor or employee of Prime Contractor, excluding only such of the foregoing as result from the willful misconduct, fraud or gross negligence of Prime Contractor or from the willful misconduct, fraud or gross negligence of any of Prime Contractor's officers, directors, agents or employees (to the extent the same is legally attributable to Prime Contractor), unless Contractor shall have knowingly approved any such willful misconduct, fraud or gross negligence or participated therein. The provisions of this Paragraph shall survive termination of this Contract.

[Remainder of page intentionally left blank]

14.3.24 Contractor acknowledges and agrees that neither the Prime Contractor nor any of its officers, directors, agents, independent contractors or employees shall be liable to Contractor for any failure on the part of the Prime Contractor to provide or furnish any of the Services required pursuant to the Prime Construction Contract. Contractor agrees that Owner will, with due diligence, seek to obtain from Prime Contractor workers compensation and liability insurance if Prime Contractor is to allow any of its employees to be on the Project Site or Prime Contractor is to store any materials or equipment on the Project Site.

OWNER:

MARINA VILLAGE ASSOCIATES, a California general partnership

By: Urban Partners, L.P., a California limited partnership, General Partner

By: Urban West Associates, a California general partnership, General Partner

By: The Kriozere Corporation, a California corporation, Managing General Partner

By: [signature]
Michael Kriozere, President

By: GENTIUM REALTY INVESTMENTS CORP., a California corporation, General Partner

By: [signature]
Its: President

CONTRACTOR:

TKCC, INC., a California Corporation, dba KOLL CONSTRUCTION

By: ______________________
Its: ______________________

By: ______________________
Its: ______________________

14.3.24 Contractor acknowledges and agrees that neither the Prime Contractor nor any of its officers, directors, agents, independent contractors or employees shall be liable to Contractor for any failure on the part of the Prime Contractor to provide or furnish any of the Services required pursuant to the Prime Construction Contract. Contractor agrees that Owner will, with due diligence, seek to obtain from Prime Contractor workers compensation and liability insurance if Prime Contractor is to allow any of its employees to be on the Project Site or Prime Contractor is to store any materials or equipment on the Project Site.

OWNER:

MARINA VILLAGE ASSOCIATES, a California general partnership

By: Urban Partners, L.P., a California limited partnership, General Partner

By: Urban West Associates, a California general partnership, General Partner

By: The Kriozere Corporation, a California corporation, Managing General Partner

By: ____________________
Michael Kriozere, President

By: GENTIUM REALTY INVESTMENTS CORP., a California corporation, General Partner

By: ____________________
Its: ____________________

CONTRACTOR:

TKCC, INC., a California Corporation, dba KOLL CONSTRUCTION

By: [signature]
Its: Exec. Vice President

By: [signature]
Its: SR. VICE PRESIDENT

TRACK 2 EXHIBIT 180
DATE 11-8-05
WITNESS: Hussey Vol. I
23 PAGE(S)

1

July 29, 1991

Mr. Gene Hussey
Vice President
Koll Construction
7330 Engineer Road
San Diego, California 92111

Re: Letter of Intent
CityFront Terrace
San Diego, California ("Project")

Dear Mr. Hussey:

Please be advised that it is the intent of Marina Village Associates ("MVA") to enter into a Guaranteed Maximum Price (GMP) contract ("Agreement") for the construction of the Project, which consisting of a new thirteen story condominium apartment building and a four story existing building rehabilitated for condominium use. Except as expressly set forth below in the section entitled "Site Preparation," this letter is not a binding contractual commitment or obligation on the part of either MVA or TKCC dba Koll Construction ("KC"). It is merely intended to serve as a means of describing the essential elements of a future contract to expedite the process of preparing necessary documents.

I. SITE PREPARATION.

Until such time as the Agreement is entered into, the following will serve as our agreement with respect to the obligations of MVA and KC with regards to work intended to be general preparation of the site ("Site Preparation") (such as cleaning, barricade construction, and mobilization activities) (the Site Preparation work is further described on Exhibit A attached hereto), and which does not include any excavation, major demolition or construction activities:

1. You have been granted a license to enter upon the Project site for the sole purpose of performing

Site Preparation work. Except for payment due from MVA to KC as set forth in Paragraphs 3 and 4 below, KC hereby agrees to indemnify, defend and hold MVA and Draper and Kramer, Incorporated, harmless from any claims, obligations, damages or liabilities (including attorneys' fees and costs) related in any way to KC's presence on the Project site or performance of the Site Preparation work except to the extent such claims, obligations, damages or liabilities are due to the negligence or intentional misconduct of MVA or Draper and Kramer, Incorporated. KC represents and warrants that the Site Preparation work will be done in a first-class, professional manner, and will be covered by KC's insurance policies normally procured for projects similar to the Project.

2. You are hereby authorized and directed to proceed with the subcontract bidding of the Excavation (as defined below) and associated mobilization activities.

3. MVA acknowledges that KC has relied on this Letter of Intent and will incur costs with respect to administration and mobilization. MVA will (a) reimburse KC for costs associated with Site Preparation work or any other such work only to the extent set forth in this Letter of Intent and (b) pay to KC a contractor's fee of three percent (3%) of the total of the costs specified in (a) above and in Paragraph 4 below. If the Agreement is entered into and a Construction Change Order (as described in Section III below) issued, the aforedescribed contractor's fee for the Site Preparation Work will be included within the amount specified for a contractor's fee in Section III below.

4. Any work performed by KC with its own forces will be reimbursed at the time and material rates set forth on the attached Exhibit B. Supervisory personnel will be reimbursed according to the rates set forth on the same attached Exhibit B.

5. The written consent of MVA is required prior to the letting of any subcontracts by KC with regards to the Project. The parties agree that KC will cause certain iron work and certain electrical work to be performed by subcontractors. Provided

(a) that MVA has given its written consent as aforesaid, (b) each subcontractor executes an indemnity provision in favor of MVA and Draper and Kramer, Incorporated, similar to the second sentence in Paragraph 1 above, and (c) each subcontractor is required to deliver certificates of insurance as KC normally requires for projects similar to the Project (substantially similar to the copy of a certificate of insurance attached hereto as Exhibit C) naming MVA and Draper and Kramer, Incorporated, as additional named insureds, then subcontractors may be utilized for selected portions of the Site Preparation work.

6. This agreement regarding Site Preparation is expressly made subject to that certain Owner Participation Agreement by and between the Redevelopment Agency of the City of San Diego and MVA dated October 12, 1990, filed as Document No. 1776 in the Office of the Redevelopment Agency of San Diego, California, on December 5, 1990, of which the only relevant portion is (i) a statement regarding an equal opportunity program for qualified minority- and women-owned businesses, (ii) a stated goal of equal employment opportunity, and (iii) a statement of an obligation to refrain from discrimination.

7. MVA will make payments to KC as required above within thirty (30) days of an invoice being submitted from KC to MVA containing (a) a description of the work performed in detail to allow MVA or its consultants to ascertain the extent and amount of the work performed, (b) a conditional lien release signed by KC relating to the work for which payment is currently requested, and (c) except for the first request for payment for Site Preparation work, an unconditional lien release from approved subcontractors for which KC has received payment from MVA for a previous application. Such requests for payment may not be submitted more frequently than once per calendar month. The amount to be paid by MVA to KC pursuant to such a proper payment request will be consistent with the amount which would have been owed had the Agreement been an executed contract.

II. EXCAVATION.

In order to meet schedule requirements, the Agreement will be a "zero dollar amount" Guaranteed Maximum Price (GMP) Cost of the Work Plus a Fee Agreement for Construction to be executed as soon as possible. This Agreement must be executed prior to any excavation or work of improvement ("Excavation") being performed on the Project site. As used herein, the term Excavation does not include Site Preparation.

After execution, this zero dollar amount Agreement will then be amended by a Change Order in the amount of the Excavation and Site Preparation work, at the time you have a subcontract award for the Excavation. At this point, the Guaranteed Maximum Price ("GMP") will be the amount of such Change Order, and the scope of work covered by such GMP will be the Excavation and the Site Preparation work. The Excavation Change Order will consist of the sum of the following:

a. The total Cost of the Work as is contemplated in the form of the Agreement described in Section IV Paragraph 1 below, including the total due from MVA to KC for Site Preparation Work pursuant to this Letter of Intent.

b. General Conditions not to exceed a lump sum amount to be agreed upon by MVA and KC in the Excavation Change Order.

c. Insurance not to exceed .55% of the total of a + b above.

d. A fee not to exceed 3.0% of the total of a + b + c above (not including items excluded from the Cost of the Work as set forth in the Agreement) as may be amended by Change Orders.

e. The Agreement and the Excavation Change Order will contain a provision expressly subordinating the amount to be earned and paid under the Agreement pursuant to the Excavation Change Order to the lien of any and all construction financing for the Project which MVA may have at the time of the Excavation Change Order or may at any time in the future obtain.

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Mr. Gene Hussey
July 29, 1991
Page 5

III. CONSTRUCTION.

No later than 45 days after MVA's delivery to KC of 95% complete Contract Documents, currently scheduled for July 31, 1991, KC shall prepare and submit to MVA a detailed estimate of the Total Cost of the Work ("Estimate") consistent with the provisions of the Agreement, not including the Excavation or Site Preparation work, and including an appropriate Contractor's Contingency and Contractor's Fee.

If approved by MVA (in its sole and absolute discretion), the Agreement shall be further amended by a Change Order in the amount of the Estimate. This Construction Change Order will consist of:

a. The total Cost of the Work as is contemplated in the form of the Agreement described in Section IV Paragraph 1 below, but which Change Order amount will not include the amount or scope of the Excavation Change Order.

b. General Conditions not to exceed a lump sum amount to be agreed upon by MVA and KC in the Construction Change Order.

c. Insurance not to exceed .55% of the total of a + b above.

d. A fee not to exceed a lump sum amount to be agreed upon by MVA and KC in Construction Change Order, which the parties currently believe will equal 3.0% of the total of a + b + c above (not including items excluded from the Cost of the Work as set forth in the Agreement) as may be amended by Change Orders.

e. The Contractor Contingency.

f. The Agreement and the Construction Change Order will contain a provision expressly subordinating the amount to be earned and paid under the Agreement pursuant to the Construction Change Order to the lien of any and all construction financing for the Project which MVA may have at the time of the Construction Change Order or may at any time in the future obtain.

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After this Construction Change Order, the GMP will be the sum of the amount of the Excavation Change Order plus the amount of the Construction Change Order.

If the Estimate is not acceptable to MVA in its sole and absolute discretion, or for the sole convenience of MVA, MVA may terminate the Agreement upon completion of the Site Preparation and Excavation work with no further obligation to KC.

IV. GENERAL

In fulfilling the intent of the parties described herein, the parties agree that:

1. The form of Agreement will be (a) Cost of the Work Plus a Fee, AIA Document No. 111, 1987 Edition and (b) General Conditions of the Contract for Construction (AIA Document A201, 1987 Edition), both documents subject to such modifications as KC or MVA may desire, each in their sole and absolute discretion.

2. The GMP will apply to all work performed up to a date twelve (12) months following substantial completion of the Project as the contractor's warranty period.

3. Any Contractor Contingency remaining at completion of construction will be shared 25% by KC and 75% by MVA.

4. All scope of work changes will be based upon the direct cost of the work required plus an agreed upon mark-up for General Conditions and a 3.0% contractor's fee. The mark-up for fee will only apply if the increases have reached a total of One Million Dollars. Similarly, if a scope change results in a direct cost credit which together with all previous scope changes have cumulatively reached a total of One Million Dollars, the 3.0% fee associated with same will also be credited.

5. The KC "Project team" will include Mr. Gene Hussey as Project Executive (Principal in Change), Mr. Jack Filer as Senior Project Manager, Mr. Mark Wolford as Project Manager, and Mr. Les Chambers as Field Superintendent.

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As stated previously, this Letter of Intent expresses our mutual intent in proceeding on this project and, except as specifically stated in the section entitled "Site Preparation," is not a binding contractual commitment on the part of either MVA or KC. A mutually binding contract for performance of the work will only take the form of the Agreement described above and executed by both parties.

Please indicate your agreement with the terms and provisions set forth in this Letter of Intent by executing one copy of this letter in the space provided below and returning the same to this office.

Sincerely,

Marina Village Associates

By: Urban Partners, general partner

By: Urban West Associates, general partner

By: Kriozere Corp., general partner

By: ______________________
Michael Kriozere

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The foregoing Letter of Intent, being a binding agreement only as to the section entitled Site Preparation, is hereby agreed to and accepted.

Date: August 5, 1991

TKCC, INC. (dba Koll Construction), a California corporation

California Contractor's License #491751

By: [signature]
Its: SR. VICE PRESIDENT, CONST.

By: ______
Its: ______

cc: PPIC - Beverly Wilson
SCB - Tom Humes, Steve Weiss
MWD - Wayne Donaldson
LF - Nancy Scull
DK - Alice Lee, J. Michael Tracy

attachments: Exhibits A, B, and C (to be supplied by KC)

C:\DMS\ROB.DIR\9011902.WP

9

CITY FRONT TERRACE
LETTER OF INTENT
EXHIBIT "A"
7-24-91

Drawing KC-1 titled "Pedestrian Walkway / Barricades" prepared by Koll Construction and dated 6-28-91 with latest revision dated 7-24-91.

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CITY FRONT TERRACE
K.C. JOB #1201
GENERAL CONDITIONS - UNIT RATES
THRU AUGUST 15, 1991

EXHIBIT 'B'

Supervision	
Jack Filer, Sr. Project Manager	$44/Hr or $1,760/Wk
Mark Wolford, Project Manager	$42/Hr or $1,680/Wk
Les Chambers, Project Superintendent	$42/Hr or $1,680/Wk
Marty Breen, Project Manager	$37/Hr or $$1,480/Wk
Bob Wilson, Pre-Construction Estimator	$42/Hr or $1,680/Wk
Secretarial/Accounting	$18/Hr
Car Allowance	In above numbers
Insurance/Benefits	33% on above numbers
Miscellaneous Carpenter	$40/Hr
Temporary	
Trailer	$50/Wk
Trailer Furniture	$25/Wk
Extinguishers	$20/Wk
Temp Fence	Covered in Demolition Contract thru Oct. 1st
Toilets	$75/Mo
Project Sign	$500 L.S.
Photographs	$50 L.S.
Trailer set-up/remove	$250 L.S.
Utilities	
Phone Installation	$400 L.S.
Phone Monthly Cost	$200/Mo
Temporary Power - SDG&E	$20,000 L.S.
Panel with service (480 V, 1,200 Amp)	$10,000 L.S.
Power Monthly Cost	$200/Mo

Liability insurance at the rate of .55% to be added to the above costs.

These unit costs are quoted for mobilization work only, and are valid for work through August 15, 1991.

CITY FRONT TERRACE
K.C. JOB #1201
GENERAL CONDITIONS - UNIT RATES
THRU AUGUST 15, 1991

EXHIBIT 'B'

Supervision	
Jack Filer, Sr. Project Manager	$44/Hr or $1,760/Wk
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Power Monthly Cost	$200/Mo

Liability insurance at the rate of .55% to be added to the above costs.

These unit costs are quoted for mobilization work only, and are valid for work through August 15, 1991.

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INSURANCE

NEW OCCURRENCE FORM

PRODUCER

INSURANCE AGENT
ADDRESS
CITY, STATE ZIP

DATE

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A	NAME OF INSURANCE COMPANY
COMPANY LETTER B	NAME OF INSURANCE COMPANY
COMPANY LETTER C	NAME OF INSURANCE COMPANY
COMPANY LETTER D	NAME OF INSURANCE COMPANY
COMPANY LETTER E	

INSURED

SUBCONTRACTOR
ADDRESS
CITY, STATE ZIP

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	ALL LIMITS IN THOUSANDS
A	GENERAL LIABILITY: X COMMERCIAL GENERAL LIABILITY; CLAIMS MADE / OCCURRENCE; X OWNER'S & CONTRACTOR'S PROTECTIVE; X BLANKET CONTRACTUAL; X	POLICY NUMBER	DATE	DATE	$1,000; $1,000; $1,000; $1,000; $; $
B	AUTOMOBILE LIABILITY: X ANY AUTO; ALL OWNED AUTOS; SCHEDULED AUTOS; X HIRED AUTOS; X NON-OWNED AUTOS; GARAGE LIABILITY	POLICY NUMBER	DATE	DATE	$ 1,000.; $; $; $
C	EXCESS LIABILITY: X UMBRELLA FORM; OTHER THAN UMBRELLA FORM	POLICY NUMBER	DATE	DATE	$ 5,000. / $ 5,000.
D	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	POLICY NUMBER	DATE	DATE	STATUTORY; $ 500 EACH ACCIDENT; $ 500 DISEASE POLICY LIMIT; $ 500 DISEASE EACH EMPLOYEE
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

GENERAL LIABILITY - "ALL OPERATIONS"; CERTIFICATE HOLDER & OWNER ARE ADDITIONAL INSUREDS ON PRIMARY & NON-CONTRIBUTORY BASIS.

WORKERS COMPENSATION - WAIVER OF SUBROGATION AGAINST CERTIFICATE HOLDER & OWNER.

CERTIFICATE HOLDER

CONTRACTOR
ADDRESS
CITY, STATE ZIP

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

SIGNATURE

Exhibit "C"

Exhibit A

13

EXHIBIT B

CONSTRUCTION SCHEDULE

Refer to Construction Schedule
Prepared By Contractor
Dated August 12, 1991

Exhibit "C"
CityFront Terrace
Salary and Benefits Schedule
August 15, 1991

Personnel	Salary/Hour Range
Operations Manager/General Superintendent	$50 to $62/hour
Senior Project Manager	$42 to $50/hour
Project Manager	$37 to $44/hour
Project Engineer/Scheduler	$25 to $39/hour
Project Superintendent	$42 to $50/hour
Assistant Superintendent	$37 to $44/hour
Secretarial/Administrative/Accounting	$18 to $24/hour

The above ranges include automobile allowances as required and are intended to accommodate reasonable C.P.I. increases over the presently scheduled duration of the project. A discretionary bonus of up to 15% of each individual's base pay is provided annually and is in addition to the above salary ranges.

The base pay is subject to a 33% labor burden in addition to the salaries quoted above. Such labor burden includes the following benefit items:

- Federal Insurance Contribution Act (FICA)
- Federal Unemployment Insurance (FUI)
- State Unemployment Insurance (SUI)
- Employee Vacation
- Employee Holidays
- Health Insurance
- Dental Insurance
- Workman's Compensation
- Sick Pay
- 401(k) Retirement Plan

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EXHIBIT D

SUBCONTRACTOR FORMS

EXHIBIT D

Exhibit A
44

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Koll Construction

SUBCONTRACT AGREEMENT

Insurance Needed
OK

Job Name:

Title of Work:

KC Vendor Number: ____________________

KC Subcontract Number: ____________________

THIS AGREEMENT, hereinafter called the Subcontract, made this day of , 19 by and between hereinafter called the Subcontractor, and KOLL CONSTRUCTION, hereinafter called the Contractor.

WITNESSETH:

That the Subcontractor and the Contractor for the considerations hereinafter named agree as follows:

A. The Subcontractor agrees to furnish all labor, material, supplies, equipment, services, machinery, hoisting equipment, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein ("Work") in connection with the construction of the

("Project") in accordance with the Contract Documents (as defined in the General Terms) and the General Terms hereof, Forms K-100B through K-100I dated ________ attached hereto, all of which shall become a part of this Subcontract and all of which the Subcontractor hereby certifies he has read and knows the contents thereof.

B. The Subcontractor's work shall include, but not necessarily be limited to:

C. Subcontractor ____________ furnish a subcontract bond in accordance with Article 23 of the General Terms.

D. The prime contract contains a liquidated damages clause in the amount of $______________ per day for which the Subcontractor shall be liable as provided in Article 9 of the General Terms.

E. In consideration of the faithful performance by the Subcontractor of all the terms, conditions and requirements of this Subcontract, the Contractor agrees to pay the Subcontractor the sum of ($) in current funds subject to additions and deductions for changes as may be agreed upon, from funds received from the Owner. All payments shall be in accordance with and subject to the provisions of the General Terms incorporated herein. (See paragraph 28.)

F. In compliance with Federal and State Regulations, the following subcontractor information is required:
Subcontractor operates as a ______________________
(Sole Prop., Partnership, Corporation)
Federal Tax I.D. No. ____________________
State Contractors License No. ____________________

G. Subject to the provisions of paragraph 12 (b) hereof, it is agreed that the venue and forum of any litigation or arbitration proceeding under this Subcontract shall be in the County of ______________.

I have read the above information and hereby certify that to the best of my knowledge it is complete and accurate.

TKCC, Inc. A California corporation
dba: KOLL CONSTRUCTION

By: ______________________________

Title:

Contractor State License No.:

Address.

Telephone:

Subcontractor:

By: ______________________________

Title: ______________________________

Address:

Telephone:

Remittance Address if different than above.

K-100A

EXHIBIT D

Exhibit A
45

17

Koll Construction

GENERAL TERMS

1. **INSURANCE.** Before Subcontractor does any work at or prepares or delivers material to the site of construction, the Subcontractor shall provide to the Contractor Certificates of Insurance evidencing coverage acceptable to Contractor in amounts either as required by the specifications or as follows, whichever is greater.

(a) **Worker's Compensation:** As required by the laws of the state in which their work is to be performed, including a Waiver of Subrogation endorsement in favor of the Owner and the Contractor.

(b) **General Liability:** Comprehensive General Liability on an occurrence form (Claims Made coverage not acceptable) insuring personal injury and property damage against the hazards of Premises and Operations, Products, and Completed Operations, Independent Contractor's and Contractual Liability (specifically covering the Hold Harmless Agreement set forth in Section (e) of this Article 1) and the following minimum limits of liability:

Personal Injury and Property Damage	$1,000,000 each occurrence and $1,000,000 aggregate

(c) **Hazardous Operations:** When the work of this Subcontractor involves any subsurface activities, the Subcontractor shall provide liability coverage for explosion, collapse, and underground hazards (XCU) with the minimum limits listed above. Other hazardous operations as determined by the Contractor may require other coverage and/or higher limits of liability.

(d) **Automobile Liability:** Comprehensive Automobile Liability having owned, hired, and non-owned automobiles with the minimum limits of $1,000,000 combined.

(e) **Hold Harmless Agreement:** Subcontractor shall assume liability and indemnify the Contractor and Owner, from and against any liability and all loss, costs, damages, expenses, including attorney's fees, on account of claims for personal injury, including death, sustained by any person or persons whomsoever, including employees of Subcontractor, and for injury to or destruction of property of any person or organization, including loss of use thereof, arising out of the performance of the work under this Subcontract, excepting only such matters caused solely and exclusively by the active negligence or the willful misconduct of the Contractor.

The Subcontractor's insurance afforded under (b) and (c) above shall include the Contractor and Owner as Additional Insureds. Additionally, the following clause is to be added: "The insurance afforded to the Additional Insureds is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy cannot be reduced by the existence of such other insurance."

The Certificate evidencing the above required coverages shall provide that such coverage not be cancelled or reduced except by written notice to the Contractor and Owner at least thirty (30) days prior to the effective date of such cancellation or material reduction in coverage. New or renewal Certificates shall evidence all of the above required coverages.

2. **SUBCONTRACT DOCUMENTS:**

(a) The terms "Contract" and "Prime Contract" as may be used herein refer to the Contract between the Owner and Contractor for construction of the Project.

(b) The term "Contract Documents" as used herein refers to the "Contract" between the Owner and the Contractor, together with all Drawings, Specifications, General Conditions, Supplemental General Conditions, Special Conditions, Addenda, Amendments and all other instruments issued by or on behalf of the Owner and/or prepared by the Architect for the Project, together with all other documents or instruments referred to in the aforesaid "Contract" and "Contract Documents."

(c) The term "Subcontract" as used herein refers to this Subcontract together with any exhibits, attachments or addenda, including without limitation all of the General Terms incorporated herewith and referred to herein.

(d) The term "Subcontract Documents" as used herein refers to the "Contract", "Contract Documents", and "Subcontract"

(e) In the event of a conflict between any of the Subcontract Documents, the documents shall take precedence in the following order and the one taking precedence controls over the one(s) following:

(i) The Contract, together with all Change Orders, modifications and exhibits;

(ii) The Contract Documents in the order listed in the Contract;

(iii) The Subcontract, together with all Change Orders and exhibits; provided, however, the Subcontract shall control when the provisions of the Subcontract require stricter performance by the Subcontractor.

(f) Subcontractor specifically agrees to perform in accordance with the provisions of the "Contract Documents", provided, however, nothing in the Contract Documents shall be construed to limit any and all actual damages that may be incurred by Contractor and recovered by Contractor from Subcontractor as a result of any default by Subcontractor. Subcontractor agrees that he has read the "Contract Documents" and copies were made available for Subcontractor and Subcontractor agrees and acknowledges that he shall similarly make copies of such Documents available to his Sub-Subcontractors, if any, and that all such Sub-Subcontractors will agree to be bound by the Contract Documents and the Subcontract Documents.

3. **WORKMANSHIP**

(a) Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all material and equipment used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided for in the Contract Documents to be otherwise.

(b) If in the execution or performance of this Subcontract, the Subcontractor shall fail to perform the Work in accordance with the terms, conditions, provisions or covenants of the Subcontract, or shall have performed any of the Work carelessly or negligently, and shall have violated any laws, rules, orders, regulations or ordinances applicable to the Subcontractor's Work hereunder, then the Subcontractor shall fully indemnify and hold the Contractor harmless from any and all actions, damages, liabilities, claims and expenses, including without limitation attorneys' fees asserted against and/or paid or incurred by the Contractor, as a result of any such failures, negligence, carelessness, or violations committed by the Subcontractor in the execution or performance of the Work hereunder.

4. **SATISFACTORY EMPLOYEES.** The Subcontractor shall employ [only persons] satisfactory to the Contractor. Subcontractor shall remove or cause to be removed from the project any employee or employees who are considered unsatisfactory by the Contractor.

The Subcontractor at all times during the progress of the work outlined in this Contract shall have a representative at the job site who is authorized to receive orders, to make decisions regarding the work to be performed, and be responsible for the total scope of work included in this Subcontract.

Subcontractor warrants that, with respect to carpentry, cement mason, teamster, ironworker, operating engineer and laborer work, as such work is defined in the appropriate AFL-CIO or Teamster Master Labor Agreement to be done at the site of construction, alterations, painting or repair of building, structure or other work, Subcontractor and Subcontractor's subcontractors of every tier, have and will continue to have for the duration of this Agreement, a valid, appropriate and current labor agreement with the appropriate union, or subordinate body, affiliated with the Building and Construction Trades Department, AFL-CIO, or with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or an affiliate thereof. It is agreed that all such work performed by Subcontractor or Subcontractor's subcontractors of every tier shall be rendered in accordance with the terms and conditions of said labor agreements. Any breach by Subcontractor or Subcontractor's subcontractors of every tier of such labor agreements shall constitute a breach of this Subcontract.

5. **PROVISIONS FOR INSPECTION AND AUDIT.** Subcontractor shall furnish to Contractor and its representatives ample facilities at all reasonable times for inspecting materials at the site of construction, at the shops, or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. Subcontractor shall further furnish to Contractor as often as required, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture, said reports to show the progress of such preparation and manufacture in such detail as may be required by Contractor, including any plans, drawings, or diagrams in course of preparation. The Contractor shall be afforded access to all the Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Subcontract, and the Subcontractor shall preserve all such records for a period of three years, or for such longer period as may be required by law, after the final payment. Subcontractor agrees that Contractor, its agents or representatives of any union with which Subcontractor has a collective bargaining agreement or with which Contractor has a collective bargaining agreement affecting or covering all or some portion of Subcontractor's Work shall have the right at any reasonable hour to inspect, copy or audit the books and records of the Subcontractor as they may pertain to the Subcontractor's payment of all required benefits to such unions or union trusts pertaining to the Subcontractor's Work on the Project. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not exercise its right to inspect, copy or audit the books and records of the Subcontractor until such time as Contractor determines in its reasonable judgement that there may be a discrepancy in the recordkeeping of the Subcontractor or that a dispute has arisen that may be resolved by Contractor's inspection of such books.

6. **INDEMNIFICATION FROM PATENT RIGHTS.** Subcontractor shall indemnify and hold Contractor harmless against any claim, suit or action, or any alleged violation or infringement of patent rights which may be made against Contractor by reason of the use in connection with or as a part of the performance of the work or the furnishing of the materials hereunder, of anything which is now or may hereafter be covered by patent, copyright or trademark, and also against all expense, including attorneys' fees, which Contractor may incur in defending or adjusting any such claim, suit or action.

7. **TIME.** Time is the essence of this Agreement. Subcontractor agrees to punctually and diligently perform all parts of his work at the time scheduled by the Contractor, which shall be subject to change by the Contractor as deemed necessary or convenient to the overall progress of the Project. In this connection, Subcontractor agrees that he will keep himself continually informed of the progress of the job and will, upon his own initiative, confer with the Contractor so as to plan his work in coordinated sequence with the work of the Contractor and of others and so as to be able to expeditiously undertake and perform his work at the time most beneficial to the entire Project. However, he shall not proceed with any phase of his work ahead of the time designated by the Contractor.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of his work in conformance with the said progress schedule. He shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors and of the Contractor in a manner that will facilitate the efficient completion of the entire work. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of Subcontractors on the premises. If the Project is divided into parts, Subcontractor will perform several or all parts simultaneously, if required by Contractor.

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If the Subcontractor be not in default in any of the provisions hereof, and in order to expedite the final completion of the building, or general or special work thereon, the Contractor directs the Subcontractor to work overtime for a second shift, it is agreed that the Subcontractor shall work said overtime, (or shifts), and it is understood that the Contractor is to pay only the actual extra cost over the rate for regular time of said overtime. Time slips covering said overtime must be checked and approved daily by the Contractor's authorized agent at the building. No overhead or profit is to be charged by the Subcontractor for said overtime.

If the Subcontractor is behind in the work hereunder, fails or refuses to supply sufficient workmen, or to deliver materials or equipment on schedule, and delays progress of the work, or if the different parts thereof are not commenced, performed, finished, and delivered on time, the Contractor shall have the right to direct the Subcontractor to furnish additional labor and expedite deliveries of material and equipment at Subcontractor's cost and expense. If such additional labor is not available, the Contractor has the right to require Subcontractor at the latter's cost, to work overtime or additional shifts (and/or weekends and holidays) to such an extent as will be sufficient to speed up and complete his work on schedule.

8. **RECOURSE BY CONTRACTOR.** In the event that Subcontractor at any time refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials of proper quality, or is in effect be adjudicated a bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment, for benefit of creditors, without Contractor's consent, or fails to make prompt payment to his materialmen and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or otherwise fails to perform fully any and all of the covenants and obligations herein contained, Contractor may, at his option, after giving twenty-four (24) hours written notice to the Subcontractor, provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Agreement; or Contractor may, at his option, terminate the Subcontractor's right to proceed with the work and, in that event, Contractor shall have the right to enter upon the premises of the Project or the Subcontractor's warehouse and take possession, for the purpose of completing the work included under this Agreement, of all materials, tools, and appliances thereon, and may employ any other person or persons to finish the work and provide the materials therefor. In case of such discontinuance of the Subcontractor's right to proceed with the work, said Subcontractor shall not be entitled to receive any further payment under this Agreement until the work undertaken by the Contractor in his prime Contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by the Contractor in finishing the Subcontractor's work, such excess shall be paid by the Contractor to the Subcontractor, but, if such expense shall exceed such unpaid balance, then the Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds such unpaid balance. The expense incurred by the Contractor as herein provided, either for furnishing materials or for finishing the work, and any damages incurred by Contractor by reason of Subcontractor's default, shall be chargeable to, and paid by Subcontractor, and Contractor shall have a lien upon all materials, tools and appliances, taken possession of, as aforesaid, to secure the payment thereof. If Contractor elects not to terminate Subcontractor's right to proceed, Subcontractor agrees to reimburse Contractor, or other Subcontractors, for losses or damages resulting from the delay in speedy progress of work.

9. **DAMAGES CAUSED BY DELAYS.** The prime contract contains a liquidated damages clause in the amount shown in Paragraph D on page 1. Should the subcontractor default in the proper performance of his work thereby causing delay in the entire work, he shall be liable for any and all loss and damages including but not limited to liquidated damages sustained therefor by the Contractor. The Subcontractor shall be liable under this paragraph even though such default is caused by strikes, lockouts, acts of God, or other reasons beyond the control of Subcontractor, unless the Subcontractor gives written notice of the delay to Contractor within 4 days following the start of the alleged occurrence. Contractor shall not be liable to Subcontractor for loss or damages resulting from the aforementioned causes, or for Contractor's delay, or for modification or extension of the schedule made at the sole discretion of Contractor, or for losses or damages resulting from Hold or Change Orders issued by Owner, or for delays caused by other Subcontractors.

10. **TERMINATION OF AGREEMENT.** Contractor reserves the right to terminate this Agreement in the event that the General Contract is terminated by Owner or the Project is substantially destroyed by fire or other catastrophe. In the event of such termination, Subcontractor shall be entitled only to payment in the lesser amount of either:

(a) Cost of the work actually completed plus 15% of cost of the work actually completed for field supervision, overhead and profit.

(b) A percentage of this Subcontract amount which reflects the value of work actually completed in proportion to the Subcontract amount.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to Subcontractor prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to any claim, or claims of lien against Contractor or against Owner for any additional compensation or damages in the event of such termination. This Agreement shall become null and void and of no effect in the event the Contractor shall not be awarded the General Contract or if for any reason beyond its control Contractor shall be unable to undertake performance of said General Contract or if the Architect or Owner objects to Subcontractor.

11. **LIENS.** Subcontractor shall at all times indemnify and save Contractor and Owner harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for attorney fees, premiums for Bonds required by title company or Owner, and all incidental or consequential damages resulting to Contractor or Owner from such claims. Further, in case suit on such claim is brought, Subcontractor shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgement as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any suit or lien to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien to be removed or dismissed and the cost thereof, together with reasonable attorneys fees shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may [illegible] lien or suit above described provided he causes the effect thereof removed promptly, in advance, from the premises above mentioned, [illegible] further do such things as may be necessary to cause Owner not to [illegible] any monies due to Contractor from Owner by reason of such lien. Notwithstanding anything to the contrary set forth above in this par[illegible] Subcontractor shall not be construed to be [illegible] in the event of a dispute over payments due for services rendered and m[illegible] furnished to the Project.

12. **DISPUTES.**

(a) **Contractor-Subcontractor Disputes.** All claims, [illegible] other matters in question arising out of, or relating to [illegible] tract, or the breach thereof (not exceeding the accumulative [illegible] of $50,000) shall be settled by arbitration in accordance [illegible] Construction Industry Arbitration Rules of the American Arb[itration] Association then obtaining, provided, that any award must be [illegible] upon the terms hereof and the rules of law applicable to the such dispute. This agreement so to arbitrate shall be spec[ifically] enforceable under the prevailing arbitration law. The parties, how[ever], reserve the right to conduct discovery under the Code [of Civil] Procedure with regard to any claim filed, and [illegible] Construction Industry Arbitration Rules of the American Arb[itration] Association and/or prevailing statutory law. The award rend[ered by] the arbitrators shall set forth their findings of the facts and [shall be] final and binding, and the judgment may be entered upon it [in any] court having jurisdiction thereof. Under no circumstances sh[all the] arbitrator or arbitrators have any power, jurisdiction, or auth[ority to] award punitive or exemplary damages to any party.

(b) **Owner Involved Disputes.** In the event that any claim shall b[e made] by the Owner against the Contractor that any part of the wo[rk per]formed by Subcontractor hereunder is defective or fails to [comply] with the plans and specifications, Subcontractor shall perfo[rm the] work necessary to correct defective work or work not in com[pliance] with the Contract Documents to the satisfaction of Owner, in[cluding] repairs to the work of other trades damaged by the rework [illegible] contractor, and if Subcontractor disputes the claim of the [illegible] Subcontractor shall notify Contractor that Subcontractor is [perfor]ming work under protest, and submit to Contractor a dema[nd for] compensation for extra work which Contractor will submit [to] Owner. In the event that the Owner shall dispute any charge [submitted] to him by the Contractor to cover Subcontractor's demand f[or time] and compensation for extra work or any item of expense not [includ]ed in the Subcontract price (in the opinion of the Subcontractor) [Sub]contractor agrees that he will assume the burden of prosecu[ting said] claim in the Contractor's name against the Owner.

Notwithstanding any contrary provision above concerning [illegible] forum, if any dispute between Owner and Contractor shall be submi[tted to] arbitration or litigation, the Contractor may, by written notice to Subcon[tractor] before the actual commencement of any such arbitration hearing or t[rial be]tween or involving Owner and Contractor, require that the question [of] responsibility of the Subcontractor and/or of the rights and obligati[ons of] the Contractor and Subcontractor with respect to one another, and [illegible] disputes, pending or otherwise, between Contractor and Subcontractor (w[hether] or not in arbitration), be submitted likewise, before the same tribunal and [illegible] collaterally to the decision upon the dispute between Contracto[r and] the Owner to the end that the entire controversy shall be resolved at [once]. In such an event, Subcontractor agrees to fully cooperate and not to in[terfere] with the rights and election of Contractor hereunder. The decision of [such ar]bitration or litigation shall be final and in the case of arbitration, may be [entered] as a judgment by any court of competent jurisdiction.

13. **CHANGES IN THE WORK.** The Subcontractor hereby agrees, [without] nullifying the original Contract, to make any and all changes or devi[ations] from and additions to the original plans and specifications, when [illegible] ordered by the Contractor to do so in writing. Furthermore, the Subco[ntrac]tor, prior to commencement of revised work, shall submit within [illegible] the Contractor written copies of his firm's cost or credit proposal fo[r] revised work. Subcontractor will support all claims for Changes with [de]tailed breakdown showing differences in quality, and value of labor and m[aterial] involved.

The time of completion will remain fixed, unless expressly otherwise [set for]th in a Change Order. If the time is extended, all added costs for same [shall] be included in the original claim for the Changes, otherwise such added [costs] will not be subject to reimbursement.

Should the Contractor elect to have any extra work performed on [a time] and material basis, in lieu of unit prices or a negotiated lump sum, [and] notifies the Subcontractor in writing, the Subcontractor will perform the [work] at his actual net cost plus overhead and profit with or without a max[imum] guaranteed total cost set up at the contractor's option. The Subcontract[or's] markup for overhead and profit will not exceed 15% (including field su[pervi]sion, tools and plant) unless agreed to by the Contractor in advance [of] commencement of work.

Charges for time and material must be supported by records [illegible] approved daily by Contractor's superintendent. Subcontractor will permi[t Con]tractor to audit its books, records, estimates, orders and files as necess[ary to] check and verify charges and credits involved.

The Subcontractor shall adhere strictly to the plans and specific[ations] unless a change therefrom is authorized in writing. In such case the [cost] of said change shall be understood and agreed upon in writing by the [Con]tractor and Subcontractor before commencement of said revised or addi[tional] work. Any additional work or deviation from the plans and specifications performed without written authorization will not be subject to reimbursement. [illegible] indicated or necessary to complete the project shall be promptly perf[ormed] as ordered by the Contractor and the proper cost or credit breakdown [thereof] shall be submitted, immediately thereafter, to the Contractor for [illegible]

14. **ASSIGNMENT OF CONTRACT.** Subcontractor shall not, without the prior written consent of Contractor, which consent can be withheld [illegible] at Contractor's sole discretion, assign, transfer, or sublet any part [illegible] of Subcontractor's work, nor assign any payments to others, [illegible] all labor, materials, and equipment necessary for the performance [of this] Agreement. Should Subcontractor wish to assign, transfer [illegible]

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[illegible] "assign" any portion of Subcontractor's work, his request must be made to Contractor in writing. Subcontractor's request to assign shall include the submittal by Subcontractor of the proposed assignee's qualifications, financial and experience, the written contract between the Subcontractor and Assignee and the certificate of insurance naming Owner and Contractor as "Additional Insureds" and evidencing the same coverage identified in Article I. Contractor may assign or transfer the whole or any part of this Agreement, its rights hereunder, to any corporation, individual, or partnership which it may designate.

15. ACCEPTANCE OF WORK PERFORMED BY OTHERS. The Subcontractor shall carefully inspect and approve the work performed by others that is to receive, abut or similarly relate to the work of this Subcontract. If the Subcontractor finds the work performed by others to be unacceptable, he shall notify the Contractor in writing. If the Subcontractor commences the work of this subcontract, such commencement shall constitute acceptance of the work performed by others.

16. PROTECTION OF SUBCONTRACTOR'S OWN WORK. This Subcontractor shall effectually secure and protect the work to be done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the workmen of the General Contractor, and other subcontractors directly from his operation and from the results therefor.

17. RESPONSIBILITY FOR DAMAGES TO WORK IN PLACE. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the site caused by him or his agents, employees or guests. The Subcontractor shall be entirely responsible for any loss (including theft) or damage done to his work, materials, tools, equipment and other appliances in any manner aforementioned even though the particular work damaged may be finished at that time and the Subcontractor may be working in some other portion of the premises.

18. LAYOUT RESPONSIBILITY. The Contractor shall establish principal axis lines and levels wherefrom the Subcontractor shall lay out and shall be strictly responsible for the accuracy of his work and for any loss or damage to other contractors engaged in work on the site by reason of failure of the undersigned Subcontractor to set out or perform his work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

19. CLEAN-UP. At all times during the course of construction, the Subcontractor shall maintain the premises in a clean, safe and orderly condition. Rubbish, waste material and surplus material will be collected or removed daily, or less frequently, as the Contractor may require. Upon completion of the work under this agreement, the Subcontractor shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If the Subcontractor fails to perform a clean-up function within twenty-four (24) hours after notification by the Contractor to do so, the Contractor may proceed with that function as he adjudges necessary and in the manner he may deem appropriate, with the understanding the cost thereof shall be charged to the Subcontractor and deducted from monies due under this Agreement. Notification to Subcontractor's Foreman or Superintendent will be considered proper notice.

20. USE OF CONTRACTOR'S EQUIPMENT, LABOR, ETC. In the event Subcontractor shall use Contractor's equipment, labor, facilities, hoists, elevators, utilities, power, light, water, ladders, scaffolding, etc., he shall reimburse Contractor at a predetermined rate, unless otherwise stated herein. Further, that in so doing, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from any claims, actions, demands, damages, liabilities, or expenses, including legal fees, resulting from the use of same by said Subcontractor or his agents, employees, or permittees, including injuries caused by unsafe conditions, whether caused by negligence of Contractor, his Agents, Employees, or otherwise.

Contractor shall have the right to utilize the Subcontractor's facilities, equipment or scaffolding at no additional cost thereto. If the Subcontractor is directed to supply facilities of greater capacity, or for a longer duration than required for the work hereunder, the Contractor will pay its proportionate share of the costs, such proportions to be fixed by the Contractor.

21. GUARANTEE. Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee Form, will guarantee all materials and workmanship and agrees to replace at his sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound as specified. All guarantees will inure to the benefit of the Contractor, Owner, their successors or assigns, including equipment warranties.

(a) Additional terms applicable to Roofing, Sheetmetal, Caulking and/or Waterproofing Subcontracts: Subcontractor agrees to maintain roofing, waterproofing, gravelstops, flashings and counter flashings in a watertight condition for the number of years specified in the Contract Documents and in any case not less than 2 years. If the waterproofing or roof leaks, the Subcontractor agrees to make the necessary permanent repairs immediately to produce a watertight condition and agrees to reimburse the Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or decorating, etc., caused by the leaks. Subcontractor will remove and replace any work necessary to gain access to the roofing or waterproofing membranes being maintained hereunder.

(b) Additional terms applicable to Plumbing, Heating, Air Conditioning, Electrical, Fire Sprinkler or Process Piping Subcontracts: Subcontractor shall be responsible for all damages to the building, furnishings and all improvements included in the General Contract caused by leaks in the piping or conduit systems installed hereunder, or due to leaks where pipes or conduit go through walls or slabs where the joints around such pipes or conduits are to be watertight. The Subcontractor shall repair at his expense all damage so caused or will reimburse the Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or etc., caused by such leaks.

(c) Additional terms applicable to Glass and Glazing, Curtain Wall, or Store Front Subcontracts. Subcontractor [illegible] responsible for all damages to the building and furnishings, and improvements, caused by leaks through, under or around [illegible]. Subcontractor will remove and replace any work as required for access to sources of leakage to be corrected hereunder.

22. JURISDICTIONAL DISPUTES.

(a) The Subcontractor accepts and agrees to be bound by the rules and regulations and decisions of the appropriate [illegible] specified in the appropriate labor agreements for the [illegible] jurisdictional disputes and will immediately comply with [illegible] decisions of said tribunals, which affect the performance of work by the Subcontract. Subcontractor agrees to bind, [illegible] contract, all of his subcontractors of every tier to said procedures and regulations and decisions of said tribunals in the same [illegible] and to the same effect as provided herein with [illegible] Subcontractor.

(b) During the performance of the Subcontractor's Work, [illegible] contractor, its employees, Sub-Subcontractors and suppliers [illegible] such entrance or entrances to the job site as may be designated from time to time by the Contractor.

23. BONDING OF SUBCONTRACTOR. If Paragraph C of this [illegible] tract Agreement requires the Subcontractor to furnish a Subcontract [illegible] the Subcontractor shall, within 10 calendar days of the execution [illegible] Agreement, furnish such Subcontract Bond on Contractor's Bond [illegible] a surety acceptable to the Contractor. The bond premium will be [illegible] Subcontractor and is included in the Subcontract amount and any [illegible] in the bond premium resulting from changes in the amount of the Subcontract shall be paid by the Subcontractor and included in the amount [illegible] Subcontract change order. The subcontractor will not proceed with [illegible] until the Subcontract Bond is received and approved by the Contractor.

24. MATERIALS FURNISHED BY OTHERS. In the event the [illegible] includes installation of materials or equipment furnished by others [illegible] be the responsibility of the Subcontractor to examine the items [illegible] and thereupon handle, store and install the items with such skill and [illegible] to insure a satisfactory installation. Loss or damage due to acts of [illegible] contractor shall be charged to the account of the Subcontractor and [illegible] from monies due under this Agreement.

25. SUBCONTRACTOR AS AN INDEPENDENT CONTRACTOR. Subcontractor is an independent contractor and shall, at his sole cost [illegible] expense, and without increase in the Contract Price, comply with all laws, ordinances, and regulations of all governing bodies having jurisdiction [illegible] the work; obtain all necessary permits and licenses therefor; pay for [illegible] hook-ups to sewers, flood control outfall, water or fire lines, electric, gas, utility systems or assessments applicable thereto; all manufacturers' taxes, use taxes, processing taxes, and all federal and state taxes, [illegible] and contributions for Social Security and Unemployment which are [illegible] by wages, salaries, or other remunerations paid to Subcontractor's em[illegible] whether levied under existing or subsequently enacted laws, rules, or [illegible] tions. Subcontractor, upon request, shall furnish evidence satisfactory [illegible] tractor that any or all of the foregoing obligations have been fulfilled.

No certificate given or payments made under this Agreement, [illegible] final certificate or final payment, shall be conclusive evidence of the [illegible] mance of this Contract, either wholly or in part, and no payment shall [illegible] strued to be an acceptance of defective work or improper materials. [illegible] tractor has satisfied himself, by his own investigation and research, [illegible] all the conditions affecting the work to be done and materials to be [illegible] ed, and as to the meaning and intention of the Contract Documents [illegible] to be bound, and basing his conclusions as to those this Subcontract on [illegible] investigation, independent of any estimates or other information prepared [illegible] by Owner, Architect, or Contractor, proposes to furnish the [illegible] part of the Project. No estimate or bid of Subcontractor preceding it [illegible] contract, and no verbal agreement or conversation with any representative [illegible] Owner, Architect, or Contractor, either before or after the execution [illegible] Subcontract, shall affect or modify any of the terms or obligations con[illegible] herein.

The Subcontractor shall promptly notify the respective departm[illegible] official bodies when its work is ready for inspection and shall, at [illegible] all work required to remove any violations or to comply with such [illegible] without additional charge to Contractor. The Subcontractor shall perf[illegible] work necessary to obtain approvals from the authorities mentioned without additional cost to the Contractor.

26. SIGNS. Subcontractor will not place any temporary or permanent [illegible] on any portion of the building, the property or fences except upon prio[illegible] ten authorization of Contractor.

27. TOOL SHEDS & BOXES. The Subcontractor will provide, loca[illegible] relocate, and maintain adequate sheds and/or tool boxes as designated [illegible] tractor. Contractor will not be responsible for any clothing, tools, ma[illegible] or equipment lost, damaged, stolen or destroyed.

28. PAYMENTS

(a) It is agreed that progress payment to the Subcontractor [illegible] made with funds received by the Contractor from the Owner [illegible] performed by the Subcontractor as reflected in the [illegible] Application for Payment and only when and if such funds are re[illegible] by the Contractor from the Owner.

Approval of the Contractor's Application for Payment and pay[illegible] for the work reflected therein shall be a condition precedent [illegible] must occur before the Contractor will be obligated to pay the [illegible] contractor. If, and only if, Contractor receives such a payment [illegible] Owner and Subcontractor complies with Provisions [illegible] below, then Contractor agrees to pay Subcontractor the said [illegible] sum on or about the 10th day of the month following the mont[illegible]

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Koll Construction
GENERAL TERMS (Continued)

which the work was performed, provided however, the Contractor may retain as part security for Subcontractor's fulfillment of this Contract, an amount equal to ten percent (10%) of the value of the work completed by Subcontractor as determined by the Contractor and/or Owner for the purpose of subcontract progress payment. Final payment shall only be made to Subcontractor from sums received by Contractor as final payment from Owner, subject to the provisions of Paragraph (b), (c), and (d) below. Final payment to the Contractor by the Owner shall be a condition precedent which must occur before the contractor will be obligated to make final payment to the Subcontractor.

(b) The Subcontractor shall prepare and present to the Contractor, for its approval, on or before the last day of each calendar month an invoice using Contractor's form K-112 showing the amount due. Each such invoice shall contain the following:

1. A statement of the current subcontract sum including approved change orders.
2. The percentage of completion of the current subcontract sum.
3. Less retention applicable.
4. Total amount due.
5. Less previous payments.
6. The net amount due for the current period.

Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided releases executed by all persons who might have mechanic's lien, stop notice or labor and material bond rights against the project and arising out of work performed under the Subcontract, using Contractor's forms K-113 or K-114 along with evidence of payment as applicable to all unions and union trust funds. In the event Subcontractor provides a conditional release on form K-113 from any of those persons identified above, Contractor will prepare and issue a joint check for the amount indicated in such conditional release. As a condition precedent to final payment, Contractor requires Subcontractor to provide a full and final release from those materialmen and subcontractors claiming through him.

(c) The Contractor may withhold monthly progress payments, in whole or in part, in order to protect the Contractor and/or Owner from loss because of:

1. Defective work not remedied, missing materials not furnished, clean-up not performed;
2. Claims filed or reasonable evidence indicating probable filing of claims, including claims covered by insurance until such claims are accepted by carrier;
3. Failure of Subcontractor to make payments properly to his Subcontractors, or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other claims growing out of the work;
4. Reasonable doubt that the work can be completed for the unpaid balance of the contract sum;
5. Damage to another Subcontractor, and/or Contractor;
6. Reasonable indication that the work will not be completed on schedule or within the contract time;
7. Unsatisfactory prosecution of the work by the Subcontractor;
8. Failure to deliver "as built" drawings, written guarantees or warranties; or
9. Failure to obtain the approvals required by any authority having jurisdiction.
10. Work performed at the site of construction by Subcontractor, its subcontractor(s) or the employees of either of them prior to providing Contractor with the following which must be acceptable to Contractor: (A) Certificates of Insurance; and (B) Subcontract Bond, when required.

When the above grounds are removed by Subcontractor, payment shall be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (c) 2 and 3 above, and/or supporting invoices, receipts or other records to substantiate the amounts owing or paid as Contractor may require.

No progress payment, nor any partial or entire use, or occupancy of the project by the Owner, shall constitute an acceptance of any work not in accordance with the Subcontract.

(d) The balance owing to the Subcontractor under the terms of this Agreement shall be due and payable thirty-five (35) days after completion and acceptance of the project, and the removal of all grounds for withholding, enumerated under 28 (c) above, and satisfactory proof that all claims, including taxes, growing out of the work hereunder (and any liens related thereto) have been released.

(e) Any and all funds payable to the Subcontractor hereunder are hereby declared to constitute trust funds in the hands of the Subcontractor, to be applied first to the payment of claims of his subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds filed and premiums on insurance accruing during the construction of the described work, before application to any other purpose.

29. RISING COSTS. The Contractor agrees to pay the sum herein set forth in current funds for such work and materials, and in the manner and at the times herein set forth. Said sum is intended to include all increases in cost, foreseen or unforeseen, including, without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by the Subcontractor. All loss or damage arising from any of the work performed under this Contract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by the Subcontractor. It is mutually agreed between the parties hereto that no payment made under this Contract, shall be conclusive evidence of the performance of this Contract, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

30. NO DELAY BY CONTRACTOR. Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of this Agreement, the performance of any work, the delivery of any material, the payment of any monies to Subcontractor, or otherwise, the Subcontractor agrees that it will not directly or indirectly stop or delay any work or part of work on its part required to be performed, or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy, regardless whether such controversy, dispute or question is subject to arbitration or litigation.

31. SAFETY.

(a) The Subcontractor shall, at its own cost and expense, protect its own employees, employees of Contractor and all other persons from risk of death, injury or bodily harm arising out of or in any way connected with the work to be performed hereunder, and Subcontractor shall strictly comply with all safety orders, rules, regulations or requirements of all federal, state and local government agencies exercising safety jurisdiction over said work including, but not limited to, the federal and state OSHA REGULATIONS and shall comply fully with all of Contractor's safety requirements, policies and rules. Subcontractor shall indemnify and save Contractor harmless from any liability, loss, cost, damage or expense, including attorneys' fees, which Contractor may suffer or incur as a result of any cause of action, proceeding, citation or work stoppage arising out of or in any way connected with the alleged violation by Subcontractor of any such safety order, rule, regulation or requirement, whether such violation is ultimately proved or not.

(b) If Subcontractor or its personnel do not comply with all safety requirements applicable to the Project, Contractor may, but shall not be obligated to, give written notice of violation to Subcontractor. If Subcontractor has not caused its performance to come into compliance with such safety requirements within twenty-four (24) hours (or, in the event compliance cannot be completed within twenty-four (24) hours, the immediate commencement and continued effort of such action as may be necessary to obtain compliance within a reasonable time from commencement) after such written notice has been presented to Subcontractor, without prejudice to any other remedy available to Contractor hereunder, payment on this Subcontract will be withheld until such time as compliance has been obtained to the safety requirement(s) which was the subject of the written notice of violation and satisfactory assurances, reasonably acceptable to Contractor, have been given by the Subcontractor to insure that the Subcontractor and its personnel engaged on the Project will comply with all safety requirements as stated herein.

32. REQUIREMENTS PRIOR TO COMMENCEMENT OF WORK. Subcontractor shall not proceed with any work nor receive payment under this Subcontract until, among other things, the Contractor has received a fully executed copy of this Subcontract Agreement together with appropriate insurance certificates and a Subcontract Bond, if required.

33. ATTORNEY FEES. If either party becomes involved in litigation or arbitration arising out of this Subcontract or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit, shall award attorney fees to the prevailing party. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorney fees paid or incurred in good faith.

34. NOTICES. Any notices required or permitted under the Subcontract shall be in writing and shall be deemed duly served only if either hand delivered or given by certified mail, return receipt requested, addressed to the address contained in the Subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice mailed shall be deemed received the date the return receipt is signed.

35. GENERAL.

(a) Section headings herein are inserted only for convenience or reference, and shall in no way define, limit or prescribe the scope or intent of any provisions of the Subcontract.

(b) All previous oral or written promises, agreements, and representations relating to the Subcontract are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Subcontract, into which the Subcontract Documents have been incorporated, shall constitute the full and complete agreement between Contractor and Subcontractor.

(c) If any term or provision of this Subcontract shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Subcontract shall be valid and shall be enforceable to the fullest extent permitted by law.

(d) All covenants, agreements, indemnities, guaranties and warranties made by the Subcontractor shall survive completion of the work in the Subcontract, and any payment of the Contract Price in whole or in part.

(e) No waiver by Contractor, whether expressed or implied, of any provision of this Subcontract shall be deemed to be a waiver of any other provision of this Subcontract or of any subsequent breach by Subcontractor of the same provision or any other provision.

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KOLL CONSTRUCTION SUBCONTRACT AGREEMENT
ADDENDUM A

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This Addendum A to Koll Construction Subcontract Agreement is attached to and made a part of that certain Koll Construction Subcontract Agreement by and between TKCC, Inc., a California corporation d/b/a Koll Construction, referred to as Contractor, and ____________________, referred to as Subcontractor. All of the terms and conditions of the Subcontract Agreement are unmodified except for the following:

A. Paragraph 1 is revised to add Draper and Kramer Incorporated as an Additional Insured in the same manner and to the same extent as the Contractor and Owner.

B. In Paragraph 4, the third paragraph (requiring labor union agreements) shall apply only with respect to Operating Engineers.

C. In Paragraph 12(b), replace the word "demand" with the word "claim."

D. In Paragraph 14, identify the Additional Insureds as Owner, Contractor and Draper and Kramer Incorporated.

E. Delete the first sentence of Paragraph 21 and replace it with the following:

> Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee Form, will guarantee all materials, workmanship, design and/or engineering as it relates specifically to this project and agrees to replace at its sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project.

F. In Paragraph 21(a), add the words "caulking and sealants" after the word "waterproofing" in the third line.

G. The heading in Paragraph 30 is deleted and replaced with the heading "No Delay by Subcontractor."

Except as set forth herein, all other terms and conditions of the Subcontract Agreement are unmodified.

TKCC, Inc., a California corporation
d/b/a Koll Construction

By:______________________________
Its:______________________________

Subcontractor:

By:______________________________
Its:______________________________

EXHIBIT "D"

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KOLL CONSTRUCTION

SUBCONTRACTOR'S INVOICE AND RELEASE

INVOICE NO. ________ AREA NO. ________ P.M. APP. ________ A.M. APP. ________ ACCT. APP. ________

COST MONTH ________ VENDOR NO. ________ JOB NO. ________ P.M. Date ________ A.M. Date ________ ACCT. Date ________

PW NPW ITEM NO. ________

ROUTE TO ________

SPECIAL INSTRUCTIONS ________

CHECK

Check Date	Check Number	Joint Payee	Retention	Net

Subcontractor's Name ________ Subcontractor's Invoice No: ________

Remittance Address ________ Phone No. ________

The following invoice covers work completed THROUGH CALENDAR MONTH ENDED (date) ________

Job Name ________ Koll Subcontract No. ________

Job Address ________

Contract Amt. Thru C.O.# ____ ________

____ % Complete To Date ________

Less: ____ % Retention ____(________)____

Total This Request ________

Less: Amount Previously Invoiced ____(________)____

Amount Due This Payment ________

SUBCONTRACTOR'S CONDITIONAL RELEASE

TO: THE OWNER OF THE REAL PROPERTY AND WORK OF IMPROVEMENT DESCRIBED ABOVE, ITS CONSTRUCTION LENDER AND TKCC, INC., A CALIFORNIA CORPORATION, DBA: KOLL CONSTRUCTION.

Upon receipt by the undersigned of a check from Koll Construction in the sum of $ ________ payable to the above-named Subcontractor, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release pro tanto any mechanic's lien, stop notice, equitable lien or labor and material bond rights the undersigned has on the above-referenced Project to the following extent. This release covers a progress payment which constitutes payment in full for labor, services, equipment or material furnished to the above-referenced Project up through and including the end of the above calendar month. This release does not cover any retention or items furnished after said date. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

This release is for the benefit of, and may be relied upon by, the owner, the prime contractor, the construction lender and the principal and surety on any labor and material bond. The undersigned does hereby represent and warrant that the undersigned has or will fully pay for all labor and materials, any and all welfare, pension, vacation or other contributions required to be made on account of the employment of such laborers or mechanics so provided by the undersigned and does hereby agree to indemnify and hold each of the foregoing, the Project, work of improvement and real property, free and harmless from any and all claims or liens through the date indicated herein.

The person signing this release on behalf of the undersigned firm warrants and represents to have the full legal authority to act for and bind the undersigned firm to the terms hereof.

DATED: ________ Firm Name ________
(Firm furnishing labor, etc.)

By: ________ Title ________
(Original Signature)

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EXHIBIT -

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DRAPER AND KRAMER
INCORPORATED

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Application for Payment
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TRADE PAYMENT BREAKDOWN

Project ______________________ Trade Code ______________________

Trade ______________________ Month of ______________________

Subcontractor ______________________

Item of Work	Value in Contract Amount of Approved Change Order	% Complete	Value of Work Complete
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
TOTAL			

Change Orders No.

1.
2.
3.
4.
5.

Note: 1. Itemize contract sum (which equals total) which nets identifiable work components on receipt of this from this column is to be completed and return to the General Contractor for approval.

This form will also be used in submitting monthly requisitions, which for base contract as well as change order work will be used by subcontractor as backup to his requisition.

2. Each month, subcontractor shall complete and total these columns. No other format will be acceptable.

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THE AMERICAN INSTITUTE OF ARCHITECTS

TRACK 2 EXHIBIT 181
DATE 11-8-05
WITNESS: Hussey Vol. I
24 PAGE(S)

AIA Document A201

General Conditions of the Contract for Construction

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION

1987 EDITION
TABLE OF ARTICLES

1. GENERAL PROVISIONS
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12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work is to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the

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Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2

OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;

.2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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.3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;

.4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the

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Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Con-

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tractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

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4.3.4 Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

4.3.8.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.3 and no decision has been rendered.

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4.5.2 Rules and Notices for Arbitration. Claims between the Owner and Contractor not resolved under Paragraph 4.4 shall, if subject to arbitration under Subparagraph 4.5.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.5.3 Contract Performance During Arbitration. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.4.

4.5.4 When Arbitration May Be Demanded. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.3.2.

4.5.4.1 When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.5.4.2 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.5.1 and 4.5.4 and Clause 4.5.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.5.5 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.5.6 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

4.5.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such change.

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5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

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ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

.1 a change in the Work;

.2 the amount of the adjustment in the Contract Sum, if any; and

.3 the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the

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Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or desig-

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nated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.5.

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

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ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.1.4.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

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.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

.7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.1.1 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.3.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.5. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.5. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.11 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date

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for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures.

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The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

.1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 **After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction;

.2 an act of government, such as a declaration of national emergency, making material unavailable;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;

.4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or

.5 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to jus-

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tify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of this Contract.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

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TRACK 2 EXHIBIT 182
DATE 11-8-05
WITNESS: Hussey 142 PAGE(S)

DOC. NO. 00800
SUPPLEMENTARY CONDITIONS

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The following supplements modify, change, delete from or add to the General Conditions of the Contract for Construction, Document A201, Fourteenth edition, 1987, issued by the American Institute of Architects, Washington, D.C. Where any article of the General Conditions is modified or any paragraph, subparagraph or sub-subparagraph thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that Article, Paragraph, Subparagraph or Sub-subparagraph shall remain in effect.

The General Conditions, Supplementary Conditions and all Division 1 Sections are a part of each and every Section of the Project Manual Specifications.

ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS.

Subparagraph 1.1.1: Delete the phrase following (1) and insert in its place "A written amendment to the Contract signed by Owner and Contractor."

Subparagraph 1.1.3: add to the end of Subparagraph the following: "Nothing contained in this Subparagraph 1.1.3 shall alter the responsibilities established in Subparagraph 3.3.1."

Add the new Subparagraph 1.1.8:

1.1.8 The term "provide", including derivatives thereof, shall be interpreted to mean "furnish, fabricate, complete, transport, deliver, install, erect, construct, and finish, including all labor, materials, equipment, apparatus, appurtenances, and expense necessary to complete in place ready for operation or use under the terms of the Contract Documents.

Add the new Subparagraph 1.1.9:

1.1.9 The term "furnish" shall mean supply or furnish only to the project site. Products and materials to be furnished shall be consigned to the Contractor and delivered to the project site.

Add the new Subparagraph 1.1.10:

1.1.10 The term "install" shall mean install any product or material furnished. Such products and materials

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shall be received at the project site, unloaded, stored, protected and installed complete in place in accordance with the Contract Documents.

Add the new Subparagraph 1.1.11:

1.1.11 The term "review" where used in conjunction with Architect's response to submittals, requests, applications, inquiries, reports and claims by the Contractor, will be held to limitations of the Architect's responsibilities and duties as specified in the General Conditions of the Contract and Supplementary Conditions. In no case will the Architect's review, certification, response, or decision be interpreted as a release of the Contractor from responsibilities to fulfill requirements of the Contract Documents.

Add the new Subparagraph 1.1.12;

1.1.12 The term "Project Site" is defined as the space available to the Contractor for performance of the Work, either exclusively or in conjunction with others performing other work as part of the project. The extent of the project site is shown on the Drawings.

Add new Subparagraph 1.1.14:

1.1.14.1 The term "Architect" as it refers to all work of the Project except as defined in paragraph 1.1.14.2 below refers to the firm of Solomon, Cordwell, Buenz & Associates, Inc., 57 West Grand Avenue, Chicago, Illinois 60610.

1.1.14.2 The term "Architect" as it refers to all work of the Soap Factory portion of the Project as defined by "Project Limit Lines" defined in the Drawings refers to the firm of Architect Milford Wayne Donaldson, Inc., 846 Fifth Avenue, Suite 300, San Diego, California 92101.

1.1.14.3 Notwithstanding the distinction between the term "Architect" as it refers to certain portions of the Work as set forth above, when the Contract Documents require administrative functions of the Architect the parties agree that Solomon, Cordwell, Buenz & Associates, Inc., shall perform such functions.

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1.2 EXECUTION, CORRELATION AND INTENT

Subparagraph 1.2.3; Add to the end of Subparagraph the following: "The Drawings shall be accurately followed, preference being given to figured dimensions over scaled, and to large scale details over small scale drawings. In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of work shall be provided in accordance with the Owner's direction based upon the Architect's recommendation."

Subparagraph 1.2.4; Add to the end of Subparagraph the following: "Such organization shall not operate to make the Architect an arbiter for the separation of responsibility between Contractor and Subcontractors and between Sub-subcontractors, nor shall such organization relieve the Contractor of the entire Work regardless of the trade separation."

Add the new Subparagraph 1.2.6:

1.2.6 Any material specified by reference to the number, symbol or title of specific standards, such as Commercial Standards, Federal Specifications, trade association standards, or similar standards, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on date of this Project Manual, except as limited to type, class or grade, or modified in such reference by a given date.

Add new Subparagraph 1.2.7:

1.2.7 Whenever a provision of the Specifications conflicts with agreements or regulations in force among members of trade associations, unions, or councils which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile such conflict without delay, damage, cost to the Owner, or recourse to the Architect or the Owner.

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ARTICLE 2
OWNER

2.1 DEFINITION

Subparagraph 2.1.2: Delete the last two (2) words ("or unrecorded").

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

Subparagraph 2.2.1: Delete from the second and third lines the words "Agreement and promptly from time to time thereafter," and insert in their place the following: "Excavation Change Order and the Construction Change Order (as described in the Agreement), . . ."

Subparagraph 2.2.5: Delete the words "free of charge" and insert "as a Cost of the Work." Add at the end the following: "Subsequent modifications of the Drawings and Project Manuals shall be provided in numbers as required to effectively bid and coordinate the Work."

Add new Subparagraph 2.2.7:

2.2.7 Surveys, soil borings, geotechnical information, data, or plans generally describing the unimproved land or existing structures at the site shall be provided to the Contractor by the Owner directly or through the Architect. Such information is not warranted by the Owner or Architect to be accurate. To the extent that such information is the subject of a warranty by the original preparer thereof and the benefit of such warranty may be shared with the Contractor, then the Owner and/or the Architect shall be deemed to have partially assigned the benefit of such warranty to the Contractor so that any one or more of the Contractor, Owner or Architect may make a claim under such warranty against the original preparer of such information. When such information is provided by the Owner through the Architect and it appears on Contract Documents prepared by the Architect, the Contractor acknowledges that neither the Architect nor Owner has verified such information obtained from others. Site plans prepared by the Architect are based on surveys performed for the Owner by it's consultants which have not been verified by the Architect. Contractor shall not be responsible for independently verifying such information. However, if any errors, inconsistencies or omissions relating to such information arise, the rights and obligations of the parties shall be governed by Paragraph 3.2 below.

Subparagraph 2.3.1: In the third line, delete the word "persistently."

Subparagraph 2.4.1: Delete in its entirety, and insert in its place the following:

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 10-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such 10-day period without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3
CONTRACTOR

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

Subparagraph 3.2.1; in the first sentence, replace "Subparagraph 2.2.2" with "Subparagraphs 2.2.2 and 2.2.7"; after the first sentence, delete the remainder of the Subparagraph and substitute the following: "Contractor is a knowledgeable, experienced contractor and shall be obligated to report errors, inconsistencies or omissions which a contractor of similar knowledge, experience and expertise would identify. Except as to such errors, inconsistencies, or omissions which are or should have been reported, and except as to concealed or unknown conditions as defined in Subparagraph 4.3.6, the Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents and/or such information furnished by Owner. The Contractor shall not be entitled to an increase in the Contract Sum or Contract Time on account of an error, inconsistency, or omission in the Contract Documents and/or such information furnished by Owner that the Contractor did not report to the Architect and the Owner and which should have been reported. If the Contractor performs a construction activity involving an error, inconsistency, or omission in the Contract Documents and/or such information

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furnished by Owner that the Contractor should have reported but did not report to the Architect and the Owner, the Contractor shall be responsible for such performance and the correction thereof. Notwithstanding the obligation of Contractor to report such errors, inconsistencies or omissions to both the Architect and the Owner, failure to give such notice to the Owner shall not constitute a material breach of this Agreement by Contractor."

Subparagraph 3.2.2: Insert in the last line immediately after the word "Architect," the words "and Owner."

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

Subparagraph 3.3.1; In the last sentence delete all words starting with "unless" and ending with "matters" and substitute the following: "The Contractor shall review any specified construction or installation procedure, including those recommended by any product manufacturer or supplier. The Contractor shall advise the Architect:

.1 If in Contractor's knowledgeable, experienced good faith opinion, the specified procedure deviates from good construction practice; or
.2 If following the procedure will affect any warranties; or
.3 Of any objections which the Contractor may have to the procedures."

Subparagraph 3.3.2: Insert between the words 'employees' and 'and other persons' the words "sub-subcontractors, materialmen."

3.4 LABOR AND MATERIALS

Add new Subparagraph 3.4.3:

3.4.3 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in Division 1 - General Requirements.

Add new Subparagraph 3.4.4:

3.4.4 By making requests for substitutions based on Subparagraph 3.4.3 above, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

3.5 WARRANTY

Subparagraph 3.5.1: in the thirteenth line after the word "usage," Add the following new sentences: "The Contractor's warranty will not be affected by the specification of any product or procedure unless the Contractor promptly notifies Owner and Architect in writing of its reasonable objection to such product or procedure. The Contractor's warranty will not be restricted by any manufacturer's warranty or subcontractor's warranty (or the lack of any subcontractor's warranty). The Contractor is responsible for subcontractors non-performance on warranty work. The refusal of a subcontractor or supplier to correct defective work for which it is responsible will not excuse the Contractor from performing under the Warranty."

Subparagraph 3.6.1: Delete 'bids are received or negotiations are concluded' and substituting in its place the words "expenses for the Work are incurred."

3.7 PERMITS, FEES AND NOTICES

Subparagraph 3.7.1; delete Subparagraph 3.7.1 in it's entirety and substitute the following new subparagraph:

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and the Owner shall directly pay for the Building Permit the off-site Engineering Permit, CCDC review fees, (including plan examination fees related thereto), and utility connection and similar fees. The foregoing permit and fees costs shall not be considered for purposes of calculating the Contractor's Fee or be within the Guaranteed Maximum Price. The Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when Work is performed. All costs associated with such other permits and fees paid by Contractor shall be considered as costs of the Work within the Guaranteed Maximum Price.

Subparagraph 3.7.2; add to the end of Subparagraph the following: "The Owner delegates to the Contractor all duties and responsibilities the Owner may have pursuant to any statute, ordinance or regulation requiring notification of adjacent or nearby property owners of proposed excavations as a result of the performance of the Work. The Contractor shall, as part of the work, give such notices as required, provide all lateral and subjacent support necessary to prevent any damage to adjacent or nearby property owners and shall be solely responsible to pay for any damage incurred by reason of excavations by such property owners."

.1 If entry on or encroachment upon adjoining property or public right of way is necessary to perform the Work, the Contractor shall, after obtaining approval of the Owner, obtain any necessary permissions, permits or licenses and pay all costs and fees therefore. Such costs and fees shall be paid directly by Owner. Such costs and fees shall not be a Cost of the Work and shall not be included for purposes of calculating the Contractor's Fee."

3.9 SUPERINTENDENT

Subparagraph 3.9.1; Add to the end of Subparagraph the following: "Contractor shall hire as its Project Team Mr. Gene Hussey as Project Executive, Mr. Jack Filer as Senior Project Manager, Mr. Mark Wolford as Project Manager, and Mr. Les Chambers as Field Superintendent. The composition of the Project Team shall not be changed except with the consent of the Owner, which shall not be arbitrarily withheld, provided that if any one or more of the Project Team personnel proves to be unsatisfactory to the Contractor or ceases to be in its employ, then the Contractor may substitute a replacement which is acceptable to Owner in its reasonable discretion. The Contractor shall not employ or continue to employ on the Work a superintendent against whom the Owner or Architect has made reasonable objection."

Add new Subparagraph 3.9.2:

3.9.2 The Contractor shall employ during the progress of the Work a qualified mechanical/electrical coordinator who shall be responsible for coordinating general, mechanical, and electrical portions of the Work, including checking mechanical and electrical submittals prior to submittal to the Architect, review and stamping of such submittals, and checking for conflicts and interferences between the Work of one section or trade with another. The mechanical/electrical coordinator shall have no design responsibility and shall not relieve the Architect or the Consultants of their respective responsibilities, including, but not limited to, review of submittals and coordination of construction documentation.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

Subparagraph 3.10.1; in the first line delete the words "promptly after being awarded the Contract" and substitute the words "at the time of execution of the Construction Change Order (as defined in the Agreement)".

Subparagraph 3.10.2; add to the end of the Subparagraph the following: "The Contractor shall submit the schedule of submittals within thirty (30) days after execution of the Construction Change Order (as defined in the Agreement)".

Subparagraph 3.10.2 is modified by inserting immediately prior to the word 'Architect's' the words "Owner's and."

Subparagraph 3.10.3; add to the end of Subparagraph the following: "The Owner's or Architect's receiving or reviewing of any schedule required by Subparagraph 3.10 shall not relieve the Contractor of it's responsibility to complete the project within the Contract time; nor does it create any rights in favor of the Contractor due to completion earlier than the Contract Time."

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Subparagraph 3.12.5; add to the end of Subparagraph the following: "For record keeping purposes, on all submittals the Contractor shall indicate the date the Contractor received or created each submittal and the date it was transmitted to the Architect. The Architect shall not be required to take any action on any submittal not showing such dates, however the Architect will promptly notify the Contractor of any such non-conforming submittals. Any transmittal of any submittal by the Contractor to the Architect constitutes a representation that the Contractor has reviewed the submittal whether or not such dating procedures are followed."

Subparagraph 3.12.8; in line five add the words "by discrete letter of correspondence" between the words "in writing" and "of such deviation" and in line seven add the words "by discrete letter of correspondence" between the words "approval" and "to the specific deviation."

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3.18 INDEMNIFICATION

Subparagraphs 3.18.1, 3.18.2 and 3.18.3; delete in their entirety and substitute the following new subparagraphs:

3.18.1 The Contractor shall indemnify, defend (with legal counsel reasonably acceptable to Owner) and hold harmless the Owner, the City of San Diego, the Centre City Development Corporation, the Redevelopment Agency of the City of San Diego and their agents, officers, directors, partners, employees and consultants ("Indemnitees") from and against all claims, liabilities, damages, losses (including loss of use) expenses, including but not limited to attorneys' fees and litigation costs, arising out of or resulting from or in connection with the performance of the Work, to the extent that and provided that any such claim, damage, loss or expense is attributable to personal injury, sickness, disease or death, or to injury or destruction of tangible property (other than the Work itself) including economic losses and loss of use thereof, but only to the extent or caused in whole or in part by any negligent act or omission (or any intentional misconduct) of the Contractor, any Subcontractor, any materialman sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable ("Acting Parties"), regardless of whether or not part of such claim, liability, damage, loss or expenses is caused by or attributable to the actions or negligence of an Indemnitee unless caused by the sole negligence of an Indemnitee. Except to the extent set forth herein, such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Agreement. Notwithstanding anything to the contrary contained herein, if there is a determination pursuant to a final settlement agreement approved by Owner or a final non-appealable judgment of a court of competent jurisdiction that all or any part of such claim, liability, damage, loss or expenses were caused by the negligence of Owner, its partners, directors, officers, agents, employees or contractors (other than Contractor), then Contractor's indemnity obligations set forth in this Paragraph shall exclude the proportionate amount of any such claim, damage, loss or expenses so determined to have been caused by Owner, its partners, directors, officers, agents, employees or contractors (other than

Contractor) and Owner shall at such time reimburse Contractor for the proportionate amount of expenses already disbursed by Contractor as a result of such claim, damage, loss or expense to the extent of such determination. Nothing in the foregoing sentence shall in any way affect or diminish Contractor's obligation to indemnify, defend and hold harmless the Indemnitees in full until such a determination has been rendered.

3.18.2 In any and all claims against the Indemnitee by any of the Acting Parties or any employee or agent thereof, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to:

.1 The liability of the Owner, the Owner's consultants, and agents and employees of any of them, arising out of:

a. The preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications; or

b. The giving of or failure to give directions or instructions by the Owner, the Owner's consultants, the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage; and

.2 Any and all claims, damages, losses and expenses (including attorneys' fees):

a. For punitive or exemplary damages, whether arising out of acts of any Acting Party or any other person; or

b. Caused by or resulting from the installation, existence or removal of asbestos by or on behalf of any Acting Party;

c. Caused by the subsidence of land other than subsidence arising out of or attributable to operations of any Acting Party , provided, however, nothing herein shall relieve the Contractor of its obligations to correct defective or faulty Work; or

d. Resulting from the presence of pollutants, gaseous emissions, asbestos, hazardous or toxic substances prior to the commencement of Work, whether subsurface or otherwise, unless and to the extent caused by the negligence or willful misconduct of any Acting Party.

3.18.4 Mechanic's Liens and Stop Notices. Provided Owner has paid to Contractor all undisputed sums due under the Contract Documents, Contractor shall prevent (i) the recording of any mechanic's liens against the Project by its Subcontractors or any other persons or parties directly or indirectly employed by Contractor or its Subcontractors, including without limitation, all laborers, materialmen and others entitled to assert mechanic's liens; (ii) legal actions involving title to the Project or any portion thereof as a result of any mechanic's liens described in clause (i) above, and any attachments or executions of judgments pursuant thereto; and (iii) the filing of any stop notices with Owner or any lender by its Subcontractors or any such other persons or parties. If any such lien is recorded, or any such legal action is commenced, or any such stop notice is filed, Contractor shall, within ten (10) days, cause the effect of any such lien or legal action to be removed from the Project and the effect of any such stop notice to be negated by means of an appropriate bond or other action satisfactory to Owner. Contractor may litigate or otherwise object to or dispute any matter leading to the recording of such a lien, or the commencement of such a legal action, or the filing of such a stop notice, provided that Contractor shall first cause the effect of the same to be removed or negated as provided in this Paragraph. If Contractor fails to do so within such ten (10) day period, Owner may employ whatever means it may, in its sole discretion, deem best to cause said lien, attachment, or suit, together with its effect upon title to the Project, to be removed, discharged, compromised, or dismissed, and the effect of any such stop notices or other notices to be negated. In addition, Owner and its agents and employees shall have the right at any and all times during regular business hours to examine and inspect all financial and other records of Contractor pertinent or relating to the Project, including, without limitation, records of other jobs of Contractor to which Project funds may have been diverted. Contractor shall, upon demand, reimburse Owner for all costs incurred in connection with any such action by Owner, including, without limitation, reasonable attorneys' fees and costs incurred in connection therewith.

3.19 CONTRACTOR'S ASSIGNMENT

Add new Paragraph 3.19 and Subparagraph 3.19.1:

3.19 CONTRACTOR'S ASSIGNMENT

3.19.1 The Contractor shall not assign to any party the whole or any part of this Contract, or any monies due or to become due hereunder, without written consent of the Owner in each instance. In case the Contractor, with Owner's consent, assigns all or any part of this contract or any monies due or to become due hereunder, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to the prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

Subparagraph 4.1.2; in line four delete the word "Contractor".

Subparagraph 4.1.3; in line two add a comma after the word "Architect" and in line two through line three inclusive, delete all the words starting with the word "against" and ending with the word "and."

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

Subparagraph 4.2.2; in Line eleven delete the word "guard" and substitute the word "protect".

Subparagraph 4.2.3; add to the end of Subparagraph the following: "The Architect will not have authority or responsibility to stop the Work."

Subparagraph 4.2.4; in Line five add the words "Owner's Consultants or the" before the word "Architect's" and add to the end of the Subparagraph the following: "The foregoing provisions notwithstanding, the Owner, the Owner's Consultants and the Contractor will communicate only through the Architect on issues of conformance with the Contract Documents."

Subparagraph 4.2.7; in the first line delete the words "and approve." In line 22 delete the word "approval" in two places and substitute the word "review" in both places. In lines 19 through 20 inclusive delete the words starting with ", unless" and ending with "Architect" and add to the end of the subparagraph the following: "The Architect's receiving of any Informational Submittals, of any submittals relating to equipment or systems designed by the Contractor, or of any submittals relating to alternatives proposed by the Contractor shall not constitute approval or action by the Architect on such submittals. All such submittals will be received by the Architect for record purposes only. The Architect may retain submittals in cases where a partial submission has been made and review cannot be completed until the remaining portion of the submittal or submittals of related items have been received. When such submittals are retained by the Architect, the Architect will notify the Contractor that such submittals will not be reviewed until the submittal is complete or submittals of related items have been received."

Subparagraph 4.2.8: Insert in the first line immediately after the word 'will' the words "with the approval of Owner."

Subparagraph 4.2.11: Insert a period in the fifth line after the word "promptness" and delete the remainder of the sentence.

Subparagraph 4.2.13: Insert in the first line after the word 'decisions' the words "if approved by Owner."

4.3 CLAIMS AND DISPUTES

Subparagraph 4.3.3; in line four delete the period following the word "later" and add the following: "and whether or not any impact in money or time has then been determined."

Subparagraph 4.3.5 is deleted in its entirety.

Subparagraph 4.3.6; add to the end of Subparagraph the following: "The site conditions contemplated by this Subparagraph do not extend to discovery of asbestos, PCB's or other hazardous materials, which are covered under Paragraph 10.1.2."

Subparagraph 4.3.8.2; add to the end of the Subparagraph the following: "The Contractor shall include within the Guaranteed Maximum Price and the Contract Time job costs covering fifteen (15) days for project delays in accordance with this subparagraph 4.3.8.2, such costs to be used as delays are agreed to by the Owner and Architect. Amounts remaining at the end of the project shall be distributed in accordance with the Agreement between the Owner and Contractor."

4.5 ARBITRATION

Subparagraph 4.5.1: Delete all portions of the first sentence of this Subparagraph following the word "thereof" in line seven.

Subparagraphs 4.5.4, 4.5.4.1, 4.5.4.2 and 4.5.5 shall be deleted in their entirety. In their place, the following is inserted:

4.5.4 Any arbitration conducted pursuant to the terms of this Agreement shall be conducted in accordance with Code of Civil Procedure §§ 1282 through 1284.2.

Subparagraph 4.5.4; in line seven delete the word "or" and delete the period at the end of subparagraph and add the following: ", or (4) upon demand pursuant to Subparagraph 10.3.2."

Add the new Subparagraph 4.5.8:

4.5.8 Location of Arbitration. Arbitration proceedings shall be held in San Diego, California and shall be administered by the San Diego Office of the American Arbitration Association.

ARTICLE 5
SUBCONTRACTORS

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Subparagraph 5.2.1; in lines two and three delete the words "as soon as practicable after award of the Contract" and substitute the words "within 45 calendar days of establishment of the Guaranteed Maximum Price." In line eleven, delete the word "promptly" and substitute the words "within thirty (30) days of receipt of the list submitted by the Contractor". In line eleven add after the word "promptly" the words ", after having been given notice by the Contractor,", and add at the end of the subparagraph the following: "A Schedule of Contract Award and a list of Proposed Subcontractors for all portions of the Work shall be furnished within 15 calendar days of the date of establishment of the Guaranteed Maximum Price to the Owner and the Architect for review. The Contractor shall furnish to the Owner and the Architect at the time of award of each subcontract or material purchase for each portion of the Work; (1) a copy of the subcontract Agreement or Purchase Order, (2) a Trade Payment Breakdown for the subcontract, and (3) a Certificate of Insurance

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evidencing satisfactory coverage of the subcontractor including evidence of coverage of all Additional Insureds."

Subparagraph 5.2.1: Delete in the second and third lines the words 'as soon as practicable after' and insert in their place "prior to the."

Subparagraph 5.2.3; delete the last two sentences of subparagraph 5.2.3.

5.3 SUBCONTRACTUAL RELATIONS

Subparagraph 5.3.1: Delete and in its place insert the following Subparagraphs:

5.3.1 All work performed for the Contractor by Subcontractor shall be pursuant to a written agreement substantially in the form attached to the Contract, and which shall contain provisions that preserve and protect the rights of the Owner under the Contract Documents with respect to Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights;

5.3.2 Require that such Work be performed in accordance with requirements of the Contract Documents;

5.3.3 Require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume towards the Contractor all the obligations or responsibilities that the Contractor, by these Contract Documents, assumes toward the Owner and Architect.

5.3.4 Shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

5.3.5 The Contractor assign its interest in the subcontract to Owner, which assignment shall become effective upon Contractor's default under the Contract Documents and Subcontractor's receipt of notification from Owner that Contractor is in default under the Contract Documents and that Owner has chosen to have the assignment become effective;

5.3.6 Require submission to the Contractor of applications for payment under each subcontract of which the Contractor is a party, and reasonable time to enable the Contractor to apply for payment in accordance with Article 9 of the General Conditions and Article 12 of the Agreement;

5.3.7 Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the work shall be submitted to the Contractor in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;

5.3.8 Waive all rights the Contractor and Subcontractor may have against one another for damages caused by fire or other perils covered by the property insurance described in the Contract Documents, except such rights as they may have to the proceeds of such insurance held by the Owner; and

5.3.9 Obligate each Subcontractor specifically to consent to the provisions of this Subparagraph 5.3.1. The Contractor shall make available to each proposed Subcontractor, prior to execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and each Subcontractor shall make copies of applicable portions of such documents available to their respective proposed sub-subcontractors. Subcontractor shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.10 Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTORS

Subparagraphs 5.4.1 (including 5.4.1.1 and 5.4.1.2) and 5.4.2 are hereby deleted in their entirety.

5.5 EQUAL OPPORTUNITY PROGRAM

A new Paragraph 5.5 is added as follows:

5.5 Equal Opportunity Program. Contractor agrees that, to the greatest extent feasible, qualified minority and women-owned businesses shall be used in construction of the Project. The goals for participation are that twenty percent (20%) of the dollar value of contracts be awarded to minority owned businesses and seven percent (7%) of the dollar value of contracts be awarded to women owned businesses. Qualified businesses may participate as a subcontractor or vendor of materials or supplies. At least fifty-one percent (51%) ownership and operation of the business by minorities or women, as applicable, is required for qualification.

5.5.1 Owner's Program. Concurrently with the submission to the Redevelopment Agency the final construction drawings and specifications for development of the Project, the Owner shall submit to the Redevelopment Agency and equal opportunity program pursuant to the Participation Agreement ("Program"). The Program shall describe in reasonable detail as required by the Redevelopment Agency the procedures which the Owner intends to follow to comply with the Participation Agreement. Such Program shall include the identification of a qualified consultant or non-profit organization, or shall designate a qualified employee, who the Owner shall retain, at its expense, to implement the Program, including the following:

5.5.1.1 To identify and recruit qualified minority and women-owned businesses on behalf of the Owner and Contractor;

5.5.1.2 To refer such firm to all Contractors and Subcontractors on the Project;

5.5.1.3 To assist such firms in responding to bid solicitations by identifying bidding opportunities and by providing timely information regarding plans and specifications; and

5.5.1.4 To serve as the primary point of contact for such firms and Owner and Contractor.

The Program shall be approved or disapproved by the Redevelopment Agency concurrently with and as a part of the approval or disapproval of the final construction drawings and specifications. Contractor will comply with, and will cause all Subcontractors to comply with, the requirements of the Program.

5.5.2 Contractor's Responsibility. Contractor shall ensure that a sufficient portion of the Work is made available to Subcontractors and suppliers, and shall select those portions of the Work or material needs consistent with the available Subcontractors and suppliers, so as to facilitate meeting the goal for minority and women-owned business participation. It is Contractor's responsibility to meet the goal of minority and women-owned business participation or to provide information to establish good-faith efforts to do so.

5.5.3 Failure to Meet Program Goals. If Contractor does not use either minority or women-owned Subcontractors or vendors in sufficient amounts to equal the goals established for the Program, Contractor may establish its good-faith efforts by submitting to Owner for evaluation supplementary information. Such information for determination of good faith shall be submitted on forms provided by the Agency and shall include the following:

5.5.3.1 Whether Contractor and its Subcontractors attended any meetings that were scheduled by the Agency or Owner to inform them of the Program;

5.5.3.2 Whether Contractor and its Subcontractors advertised in general circulation, trade association, and minority-focus media concerning the subcontracting and supplying opportunities;

5.5.3.3 Whether Contractor and its Subcontractors effectively used the services of available minority community organizations, minority contractors' groups, local state and federal minority business assistance offices, and other organizations that provide assistance in the recruitment and placement of minority and women-owned businesses;

5.5.3.4 Whether Contractor and its Subcontractors provided written notice to a reasonable number of specific minority and women-owned businesses that their interest in the contract was being solicited in sufficient time to allow effective participation;

5.5.3.5 Whether Contractor and its Subcontractors followed up initial solicitations of interest by contracting minority and women-owned businesses to determine with certainty whether they were interested;

5.5.3.6 Whether Contractor and its Subcontractors selected portions of the Work to be performed by minority and women-owned businesses in order to increase the likelihood of meeting the established goals (including, where appropriate) breaking down contracts into economically feasible units to facilitate minority and women-owned business participation;

5.5.3.7 Whether Contractor and its Subcontractors provided interested minority and women-owned businesses with adequate information about the Plans and Specifications, and requirements of the Contract Documents;

5.5.3.8 Whether Contractor and its Subcontractors negotiated in good faith with interested minority and women-owned businesses, not rejecting them as unqualified without sound reasons, based on a thorough investigation of their capabilities; and

5.5.3.9 Whether Contractor and its Subcontractors made efforts to assist interested minority and women-owned businesses in obtaining bonding, lines of credit or insurance required by the recipient or contractor.

5.5.4 Records and Reports. Contractor agrees that records shall be kept of the efforts described above and that a monthly written report shall be provided to Owner and the Redevelopment Agency beginning the first day of the first month following the start of construction and ending with the issuance of a certificate of occupancy. Such monthly reports shall describe:

5.5.4.1 The names, addresses and points of contact of minority and women-owned businesses identified and recruited during the month;

5.5.4.2 The other Subcontractors and suppliers to whom minority and women-owned businesses were referred;

5.5.4.3 The bidding opportunities identified and solicited from minority and women-owned business and the dollar amount of Work represented by such opportunities;

5.5.4.4 The response received from minority and women-owned businesses;

5.5.4.5 The dollar amount of the Work awarded to minority and women-owned businesses;

5.5.4.6 Evidence of the ownership of each business being used to implement the Program;

5.5.4.7 Timetable for hiring Subcontractors and suppliers; and

5.5.4.8 Other documentation demonstrating good faith efforts were made to achieve established goals.

In all instances, minority and women-owned businesses shall be separately identified and statistics separately maintained. The report shall include the specific information contained in forms supplied by the Redevelopment Agency or the Owner to the Contractor for that purpose. The Redevelopment Agency (and its representatives) shall have the right to enter the Property at reasonable times during construction to monitor implementation of the Program required by this Subparagraph.

5.6 EQUAL EMPLOYMENT OPPORTUNITY

A new Paragraph 5.6 is added as follows:

5.6 Equal Employment Opportunity. Contractor agrees, to the greatest extent feasible, Contractor and each of its Subcontractors shall affirmatively seek to employ at least sixteen and nine-tenths percent (16.9%) of minority and six and nine-tenths percent (6.9%) of women participation in their respective work forces. Compliance with the goals will be measured against the total work hours performed. Contractor and its Subcontractors shall use good faith efforts to employ such percentages of their respective aggregate work forces in each trade on all construction work by them on the Property. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and Contractor and its Subcontractors shall make a good faith effort to employ minorities and women on the Project. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of this Subparagraph. Concurrently with this mission to the Redevelopment Agency of the final construction drawings and specifications, the Owner shall submit to the Redevelopment Agency affirmative action plans for itself and the Contractor. The affirmative action plans will describe in reasonable detail as required by the Redevelopment Agency the procedures which the Contractor intend to follow to comply with this Section. The affirmative action plans shall be approved or disapproved by the Redevelopment Agency concurrently with and as a part of the approval or disapproval of the final construction drawings and specifications. Contractor and all Subcontractors shall comply with the requirements of the affirmative action plans submitted to the Redevelopment Agency or Owner pursuant to the Participation Agreement.

5.6.1 Reports. Contractor and its Subcontractors shall provide a written report to the Agency each month, on forms supplied by the Agency or Owner, containing:

5.6.1.1 Employment utilization reports for the Contractor and its prime Subcontractors;

5.6.1.2 The crafts or trades which will perform under the Contractor and the Subcontractors; and

5.6.1.3 Other documentation demonstrating good faith efforts were made to meet the employment goals and comply with the affirmative action plan, including completion of forms reasonably required by the Agency.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTOR

Subparagraph 6.1.1; delete in the first sentence of this subparagraph the words "under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation."

Subparagraph 6.1.4: Delete in its entirety.

Subparagraph 6.2.2: Insert in line 5 immediately following the word 'Architect' the words "and Owner."

Subparagraph 6.2.5: Delete in its entirety and replace with the following:

6.2.5 If Contractor causes damage to the work or property of any separate contractor, the Contractor shall, upon notice, properly attempt to settle such matter or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner may notify the Contractor, who shall then defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

Subparagraph 6.3.1: Delete in the last line the word 'Architect' and insert in its place the word "Owner."

ARTICLE 7
CHANGES IN THE WORK

7.3 CONSTRUCTION CHANGE DIRECTIVES

Subparagraph 7.3.3: Insert at the end of the second line immediately following the word "based" with the words "at the Owner's option..."

Subparagraph 7.3.3; delete Sub-subparagraphs "7.3.3.1, 7.3.3.2 and 7.3.3.3" in their entirety and substitute the following new Sub-subparagraphs:

7.3.3.1 By estimating and acceptance in a lump sum. The Contractor shall submit change proposals which include a complete itemization of quantities of materials, unit cost of materials when applicable, unit labor cost for each item of Work or total labor hours and applicable hourly rates for each classification of labor, actual cost of bonds, taxes, and project office expenses, allowance for overhead and profit, and the number of calendar days (if any) required to complete the extra Work in addition to the Contract Time or the reduction in calendar days (if any) in the Contract Time for omitted Work. Daily operational costs of temporary facilities may be included only when an extension of time is agreed upon.

7.3.3.2 By unit prices stated in the Contract or subsequently agreed upon. The Contractor shall submit an estimate itemizing the number of unit quantities of each part of the Work which is changed, multiplying such unit quantities by the applicable unit prices. The change in Contract Time shall be as described in Sub-subparagraph 7.3.3.1 above.

7.3.3.3 By cost and percentage or by cost and fixed fee. The Contractor shall keep correct records of materials, labor, equipment, transportation, and other items used or expended to effect the required change. Such records shall be kept on forms acceptable to the Architect and submitted to the Architect for review each day that such Work is performed. Only acceptable documents will be considered in establishing the cost of the change. The change in Contract Time shall be as described in Sub-subparagraph 7.3.3.1 above.

Subparagraph 7.3.4: Insert in the third line immediately after the word "Architect" the words "and Owner."

Subparagraph 7.3.5; at the end of subparagraph delete the words "and shall be recorded as a Change Order."

Subparagraph 7.3.6; in line seven after the word "profit" add the following: "in accordance with Subparagraph 7.3.10. Overhead shall include costs of engineering, shop drawing and change order review, labor of managers, superintendents, technical engineers, timekeepers, clerks and other office personnel, small tools, and home office expenses."

Add new Subparagraph 7.3.10:

7.3.10 In Subparagraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, three percent (3%) of the cost plus general conditions (if applicable) not to exceed a lump sum amount agreed upon by Owner and Contractor.

.2 For the Contractor, for Work performed by a Subcontractor, three percent (3%) of the amount due to the Subcontractor plus general conditions (if applicable) not to exceed a lump sum amount agreed upon by Owner and Contractor.

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-

subcontractor's own forces, fifteen percent (15%) of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractor, fifteen percent (15%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.

.6 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also.

Add new Subparagraph 7.3.11:

7.3.11 Measurements for Work on a unit price basis shall be made in accordance with United States Standard Measures. When specified by weight, measurement shall be computed from weight slips. Measurement for area and linear quantities shall be taken on a horizontal plane. Measurement for volume of excavation and embankment shall be computed from cross-sections by the method of average end areas. Volume of other materials shall be computed by multiplication of the surface area on a horizontal plane times the specified depth or thickness. If materials are specified to be placed in a structure, the actual volume within the neat lines of the structure, as shown on the Drawings, shall be the basis for computing the Work.

Subparagraph 7.4.1: Delete the word 'Architect' in the first line and replace it with the words "Owner through the Architect or Architect."

ARTICLE 8
TIME

8.2 PROGRESS COMPLETION

Add new Subparagraph 8.2.4:

8.2.4 The Contractor shall perform and construct the Work in accordance with the Contract Documents and applicable ordinances and regulations. Costs associated with performing and constructing the Work on a premium time basis, if necessary to complete the Work within the Contract Time identified in the Contract Documents, shall be included in the Contract Sum."

Add new Subparagraph 8.2.5:

8.2.5 If the Owner orders the Contractor to perform parts of the Work on a premium time basis, the Owner shall pay only an amount equal to that portion of wages which is in excess of the regular rate paid by the Contractor for the Work, including customary benefits. The Contractor shall make no extra charge for regular rate wages, overhead, and profit.

8.3 DELAYS AND EXTENSIONS OF TIME

Subparagraph 8.3.2: Delete in its entirety and the following is substituted in its place:

8.3.2 All claims for extension of time shall be made in writing to the Architect and copied to the Owner no more than seven (7) days after the occurrence of the claimed delay; if such notice is not given as aforesaid, all such claims shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. In the case of a continuing course of delay, only one claim is necessary.

Add new Subparagraph 8.3.4:

8.3.4 In addition to and not in contravention of the foregoing, the Owner and the Contractor agree as follows:

.1 In the event that the Work is stopped or delayed for any reason other than the fault or negligence of the Contractor:

a. if such stoppage or delay is caused by the gross negligence or intentional misconduct of Owner or the Owner's Consultants, or caused by the City or other governmental agencies, then any increased cost of the Work resulting from such delay shall become an increase to the Guaranteed Maximum Price and the Contract Time shall be extended.

b. if such stoppage or delay is caused by fire, explosion, lightning, earthquake, cyclone, inclement weather (including without limitation, rain that generally causes stoppage or delay on similar construction projects in the San Diego area) beyond the amount of time included within the Guaranteed Maximum Price and the Contract Time, in accordance with Subparagraph 4.3.8.2, riot, insurrection or war, by labor strikes, boycotts or lockouts engaged on the Work through no fault of the Contractor and that are general or regional in nature, then any increased Cost of the Work resulting from such delay shall become an increase in the Cost of the Work shall become an increase to the Guaranteed Maximum Price and the Contract Time shall be extended.The parties acknowledge that Contractor is required to provide an adequate work force of competent, suitably qualified and trained personnel to perform the Work. Contractor shall use its diligent, good faith best efforts not to cause or become involved in any labor dispute which has the effect of causing the slowdown, strike, picketing, or boycott, any of which would affect the Work, or Contractor, or other contractors or Subcontractors performing Work, or Owner. In the event of any such slowdown, strike, picketing or boycott, Contractor shall immediately avail itself of all legal remedies available to Contractor and take all other reasonable actions necessary (using its diligent, good faith best efforts) to remove such pickets and to resolve any such labor dispute. Provided Contractor has complied with the afore-described obligations regarding labor strikes, boycotts, slowdowns and similar events, and provided that Contractor has delivered to Owner written notice of any such delay and the reason therefore within five (5) days after the occurrence or commencement of such an event which Contractor believes may delay the prosecution of the Work, then the aforedescribed payments shall be made.

.2 In the event that the Work is stopped or delayed because of the primary fault or negligence of the Contractor, or of any Subcontractor of any tier, any increased cost of performance shall not be included in the Cost of the Work, and the Guaranteed Maximum Price shall not be increased nor shall the Contract Time be extended. Unless caused by the sole fault or negligence of the Contractor, payment for such delay shall, to the extent possible, be taken from within the "Contractor Contingency" line item within the Guaranteed Maximum Price.

ARTICLE 9
PAYMENTS AND COMPLETION

Subparagraph 9.2.1: Insert in the second line immediately following the word 'Architect' the words "and Owner." Subparagraph 9.2.1 is further modified by inserting immediately after the word 'Architect' in both lines four and five, the words "or Owner."

9.2 SCHEDULE OF VALUES

Subparagraph 9.2.1; at the beginning of the subparagraph before the word "Before" Add the words "At least fourteen (14) calendar days" and add at the end of the subparagraph the following: "The Schedule of Values shall list as separate line items the actual subcontract amounts or purchase order amounts for all executed subcontracts and purchase orders, and shall list as separate line items the Contractor's estimated amounts as used to establish the Guaranteed Maximum Price for all subcontract amounts or purchase order amounts for unexecuted subcontracts and purchase orders. A line item shall also be established within the Schedule of Values which shall be identified as 'Contract Contingency', which line item shall vary as subcontracts and purchase orders are executed and shall serve to provide the difference between the established Guaranteed Maximum Price and the actual cost of the Work. The Schedule of Values shall be updated monthly or otherwise as the Owner and Architect may require, and shall indicate the status of all aspects of the cost of the project as well as the costs related to changes in the Work which have been approved by Change Orders or amounts not in dispute from Construction Change Directives. Such change amounts shall be distributed within the line items for each subcontractor or purchase order, and shall be broken down into the smallest level of detail that is included in the Schedule of Values."

9.3 APPLICATIONS FOR PAYMENT

Subparagraph 9.3.1; delete Subparagraph 9.3.1 in it's entirety and substitute the following new subparagraph:

9.3.1 The procedures for application and certification of monthly Applications for Payment are as described below and as further detailed in Division 1 - General Requirements.

9.3.1.1 Within five (5) days prior to the last day of each month, the Contractor shall submit to the Owner and the Architect a Pencil Draft of the proposed itemized Application for Payment for operations completed in the current month, in accordance with the Schedule of Values. The Pencil Draft shall be complete in every respect and shall be accompanied by supporting data as indicated in Division 1 - General Requirements and as the Owner or Architect may require.

9.3.1.2 Within five (5) days after the Architect's receipt of the Pencil Draft, the Architect shall notify the Contractor of the amount that the Owner and the Architect determine is properly due to the Contractor, and of any adjustments required to be made to the Pencil Draft.

9.3.1.3 Within five (5) days after the Architect's notification to the Contractor under subparagraph 9.3.1.2, the Contractor shall submit a final monthly Application for Payment. The application shall be notarized and supported by data substantiating the Contractor's right to payment as the Owner or Architect may require, and reflecting retainage if provided for elsewhere in the Contract Documents.

Subparagraph 9.3.1; change sub-subparagraphs "9.3.1.1" to "9.3.1.4" and "9.3.1.2" to "9.3.1.5".

Subparagraph 9.3.2; add to the end of Subparagraph the following: "The Owner will not make payment for stored materials for items of a commodity nature which are readily available through distribution channels."

Subparagraph 9.3.2: Delete in the first line the words 'unless otherwise provided in the Contract Documents' and substitute "if approved in advance by Owner."

Subparagraph 9.3.3: Delete at the end of the second line the words 'no later than' and insert in their place "at the earlier of incorporation of the Work into the construction or." This Subparagraph 9.3.3 shall be further modified by deleting in the sixth and seventh lines the words "to the best of Contractor's knowledge, information and belief."

Subparagraph 9.3.3; add to the end of Subparagraph the following: "All material necessary to construct this project, upon delivery to the premises, shall not be removed from the premises without written consent of the Owner."

9.4 CERTIFICATES FOR PAYMENT

Subparagraph 9.4.2; add to the end of Subparagraph the following: "If any Application for Payment includes a payment request for on-site or off-site stored materials, the Architect's certification shall constitute only a representation that to its' best knowledge and belief such materials are of a nature and type required by the Contract Documents but not a representation that the quantity the Contractor represents exists has been stored or that the quality of the materials will remain unaffected by later shipment or handling."

Add a Subparagraph 9.4.3 as follows:

9.4.3 The Contractor understands and agrees that the final Application for Payment will constitute a further representation by the Contractor that the conditions precedent to the Contractor's being entitled to final payment as set forth in this Article 9 have been fulfilled."

Subparagraph 9.6.1; add to the end of this Subparagraph the following: "Until the Work is fifty percent (50%) complete, the Owner shall pay ninety percent (90%) of the amount requested in each Application for Payment within each line item of the Schedule of Values. Thereafter, amounts included within a Progress Payment within a particular line item of the Schedule of Values shall be made up to one hundred percent (100%) of the amount requested; provided, however, that any such reduction in retainage shall be made only if in the sole and absolute discretion of the Owner and the Architect satisfactory progress is being made in the Work. Retention related to a line item Change Order amount shall be in accordance with the above as related to the progress of the Change in Work.

Subparagraph 9.6.2; add to the end of Subparagraph the following: "If all Subcontractor and purchase order waivers of any tier are not included and correct, the entire payment will be withheld by the Owner until such waivers are correctly submitted."

9.7 FAILURE OF PAYMENT

Subparagraph 9.7.1: In line 7 delete the word "seven" and add the word "twenty-five"

9.8 SUBSTANTIAL COMPLETION

Subparagraph 9.8.1: Add at the end the following:

"Provided, however, the date of Substantial Completion shall not precede the date on which the Owner receives an approved notice of inspection (or its equivalent in a form acceptable to Owner) and approval for occupancy or use (provided Owner has satisfied its obligations to obtain such notice and approval) from the City of San Diego with respect to the Work.

Subparagraph 9.8.2; in line seventeen delete the sentence beginning with the words "The Contractor..." and ending with "....to determine Substantial Completion." In lines twenty-nine and thirty after the word "Completion" add the following: "With respect to Work enumerated on the list accompanying the Certificate of Substantial Completion, the warranty period shall start at the time of subsequent acceptance of this Work in writing by the Owner." Notwithstanding the foregoing, the warranty period for equipment installed by Contractor as part of the Work shall start at the later of Substantial Completion or the date that the warranty period from the applicable manufacturer starts.

Subparagraph 9.8.3; add to the end of Subparagraph the following: "The payment shall exclude such amounts as the Architect shall determine for incomplete Work and unsettled claims. Amounts withheld for incomplete Work or unsettled claims will be paid prior to final payment as such Work is completed or claims settled, in accordance with the regular monthly payment procedures."

9.10 FINAL COMPLETION AND FINAL PAYMENT

Subparagraph 9.10.1; add to the end of Subparagraph the following: "Should the Architect find that the Work is not acceptable under the Contract Documents and the Contract not fully performed, costs associated with the Architect's reinspection under this Subparagraph will be reimbursed to the Owner by the Contractor."

Subparagraph 9.10.3: Insert in the sixteenth line immediately following the words 'constitute a waiver of claims' the words "by the Owner." The last sentence of Subparagraph 9.10.3 shall be deleted.

Subparagraph 9.10.4: Delete the last sentence.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

Subparagraphs 10.1.2, 10.1.3 and 10.1.4, delete in their entirety and substitute the following new subparagraphs:

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be hazardous material (including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances which has not been rendered harmless), the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The suspected hazardous material shall be examined by a qualified specialist selected by Owner at the Owner's expense. Contractor shall not engage any such specialist or other environmental consultant without the prior written consent of Owner. Should the examination confirm the presence of previously unidentified hazardous material, the Owner shall be responsible for conducting abatement by separate contract to remove the potential hazard. The qualified specialist shall report that no hazardous material exists or that abatement has been satisfactorily accomplished. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is hazardous material and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of a hazardous material, or when it has been rendered harmless, as reported by the qualified specialist.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to hazardous materials, including but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other substances currently identified as toxic by governing agencies.

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify, defend and hold harmless the Contractor, and its agents and employees from and against claims, damages, losses and expenses (including, but not limited to, attorneys' fees) arising out of or resulting from those materials existing on the Project site as of the date of commencement of the Work or performance of the Work in the affected area if in fact such material is asbestos, an asbestos product, polychlorinated biphenyl (PCB) or other toxic substance (as defined by federal, state or local governmental laws and regulations) and such material has not been rendered harmless; provided, however, that such claim, damage, loss or expense is directly attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. Owner's obligation to indemnify and hold harmless various parties under this Subparagraph 10.1.4 is strictly limited to the extent such damages, losses and expenses are caused by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable.

10.2 SAFETY OF PERSONS AND PROPERTY

Subparagraph 10.2.1

Add new Sub-subparagraphs 10.2.1.4 AND 10.2.1.5:

10.2.1.4 All Construction Documents pertaining to this Work, and the joint and several phases of construction hereby contemplated, are to be governed, at all times, by applicable provisions of the Federal law and, where not inconsistent or preempted, California law, including, but not limited to, the following (including latest amendments to each):

.1 The California and Federal Occupational Safety Health Acts;

.2 Part 1910 -- Occupational Safety & Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;

.3 Part 1518 -- Safety & Health Regulations for Constructions, Chapter XIII of Title 29, Code of Federal Regulations.

10.2.1.5 The provisions of the American Standard Safety Code for Building Construction of the American National Standards Institute A10.2, 1963, as revised by A10.4, 1975, subject to latest revisions, shall be considered as accepted engineering practice with respect to safeguards during construction, including such safety requirements as set forth in the Federal Occupational Safety and Health Standards (OSHA).

Subparagraph 10.2.4:In line one delete the words "explosives or other" and add the following new Sub-subparagraph:

10.2.4.1 When use or storage of hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner ten (10) days notice in advance of such use, storage or unusual methods.

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10.3

Subparagraph 10.3.1: Insert at the beginning of the second sentence the words "provided such emergency is not directly or indirectly caused by an act or omission of Contractor or its agents, . . ."

ARTICLE 11
INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

Subparagraph 11.1.1:

Sub-subparagraph 11.1.1.1, in the last line delete the semicolon and add the following ", including private entities performing work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;"

Sub-subparagraph 11.1.1.2, in the last line delete the semicolon and add the following: "or persons or entities excluded by statute from the requirements of Sub-subparagraph 11.1.1.1 but required by the Contract Documents to provide the insurance required by that Sub-subparagraph."

Add new Sub-subparagraphs 11.1.1.8 and 11.1.1.9:

11.1.1.8 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

.1 Premises Operations (including X, C and U coverages as applicable.

.2 Independent Contractors' Protective.

.3 Products and Completed Operations.

.4 Personal Injury Liability with Employment Exclusion deleted.

.5 Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.

.6 Owned, non-owned and hired motor vehicles.

.7 Broad Form Property Damage including Completed Operations.

11.1.1.9 If the General Liability coverages are provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2. Any insurance policies required by the Contract Documents may be part of a blanket policy of insurance (with "Per Project" "Per Location" endorsements) so long as such blanket policies contain all of the provisions required by the Contract Documents and do not lessen the coverage, impair the rights of Owner or negate the requirements of the Contract Documents.

Subparagraph 11.1.2: Delete the first ten words of the second sentence and insert in its place the following: "coverages shall be on an occurrence basis . . ."

Add new Sub-subparagraph 11.1.2.1:

11.1.2.1 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by applicable law:

.1 Workers' Compensation:

(a) State: Statutory

(b) Applicable Federal (e.g., Longshoremen's): Statutory

(c) Employer's Liability:

$1,000,000 per Accident

$1,000,000 Disease, Policy Limit

$1,000,000 Disease, Each Employee

.2 Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):

(a) Bodily Injury:

$5,000,000 Each Occurrence

$10,000,000 Aggregate

(b) Property Damage:

$5,000,000 Each Occurrence

$10,000,000 Aggregate

(c) Products and Completed Operations to be maintained for two (2) years after final payment:

$5,000,000 Aggregate

(d) Property Damage Liability Insurance shall provide X, C and U coverage.

(e) Broad Form Property Damage Coverage shall include Completed Operations.

.3 Contractual Liability:

(a) Bodily Injury:

$5,000,000 Each Occurrence

$10,000,000 Aggregate

(b) Property Damage:

$5,000,000 Each Occurrence

$10,000,000 Aggregate

.4 Personal Injury, with Employment Exclusion deleted:

$5,000,000 Aggregate

.5 Business Auto Liability (including owned, non-owned and hired vehicles):

(a) Bodily Injury:

$5,000,000 Each Person

$5,000,000 Each Occurrence

(b) Property Damage:

$1,000,000 Each Occurrence

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.6 If the General Liability coverages are provided by a Commercial Liability policy, then:

(a) General Aggregate shall be not less than $10,000,000 and it shall apply, in total, to this Project only.

(b) Fire Damage Limit shall be not less than $50,000 on any one fire.

(c) Medical Expense Limit shall be not less than $5,000 on any one person.

.7 Umbrella Excess Liability (which shall match the risks insured by underlying coverage, and Contractor shall provide reasonable evidence thereof promptly after execution hereof):

$25,000,000 over primary insurance

$25,000 retention only for self-insured hazards each occurrence

Add new Subparagraph 11.1.2.2:

11.1.2.2 The insurance required by subparagraph 11.1. shall include an endorsement naming the following listed entities, their agents, consultants and employees as Additional Insureds on all policies providing required coverages:

1. Marina Village Associates
2. Urban Partners, L.P.
3. Urban West Associates
4. The Kriozere Corporation
5. Gentium Realty Investments Corp.
6. Kabuto Decom, Inc.
7. Kabuto International Corporation
8. Draper and Kramer, Incorporated
9. Solomon, Cordwell, Buenz & Associates, Inc.
10. Architect Milford Wayne Donaldson, Inc.
11. John A. Martin & Associates, Inc.

12. Frederick Russell Brown & Associates, Inc.

13. Rick Engineering Co.

14. Andrew Spurlock Martin Poirier

15. Paul S. Veneklasen & Associates

16. John Kariotis & Associates

17. Francis Krahe & Associates, Inc.

18. The City of San Diego

19. The Redevelopment Agency of the City of San Diego

20. The Centre City Development Corporation

The Additional Insured endorsement shall state that the coverage afforded the Additional Insureds shall be primary insurance for the Additional Insureds with respect to claims arising out of operations performed by or on behalf of the Contractor and shall state that: 1) if the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on excess or contingent basis, 2) the amount of the company's liability under the insurance policy shall not be reduced by the existence of such other insurance, and 3) the coverage shall not extend to the liability of the Architect, the Architect's Consultants, and agents and employees of any of them arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect, the Architect's Consultants, and agents or employees of any of them provided such giving or failure to give is the primary cause of the occurrence, injury or damage.

Subparagraph 11.1.3; in line six, add "or materially changed" after the word "expire"; add to the end of subparagraph the following: "Each certificate of insurance required by the Contract Documents shall contain the following clause: 'SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED OR MATERIALLY CHANGED, THE COMPANY WILL GIVE NO LESS THAN THIRTY (30) DAYS NOTICE TO THE CERTIFICATE HOLDER.' If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable."

11.3 PROPERTY INSURANCE

Subparagraph 11.3.1; delete the words "without involuntary deductibles" in the first sentence.

Sub-subparagraph 11.3.1.1; Add in the first sentence after the word "Architect's" the words "and other consultants." Add to the end of Sub-subparagraph: "The form of policy for this coverage shall be Completed Value."

Sub-subparagraph 11.3.1.3; delete Sub-subparagraph 11.3.1.3 and replace it with the following: "11.3.1.3 This property insurance is written with a deductible of $10,000 per occurrence."

Subparagraph 11.3.2: Delete in its entirety.

Subparagraph 11.3.3: Delete the second sentence.

Subparagraph 11.3.7: In line four add the words "the Owner's Consultants," between the words "(2)" and "the Architect".

Subparagraph 11.3.9: Insert at the end of the subparagraph the following words: "; provided, however, that in the event insurance proceeds are insufficient to cover such loss, Owner may terminate this Agreement in accordance with Paragraph 14.3."

Subparagraph 11.3.10: Delete all phrases and sentences following the words "with insurers" in the second line.

11.4 PERFORMANCE BOND AND PAYMENT BOND

Subparagraph 11.4.1; Add a new sentence to the end of such Subparagraph as follows: "In addition, Owner shall have the right to require any other bonds, provided that the cost thereof shall be included as a Cost of the Work and, if appropriate, the Guaranteed Maximum Price shall be increased by a Change Order."

Add a new Paragraph 11.5 as follows:

11.5 USE OF AIRCRAFT AND WATERCRAFT

Contractor has represented to Owner and Architect that neither Contractor nor any of its Subcontractors intend to use any aircraft, including without limitation helicopters ("Aircraft"), or any watercraft in connection with performance of the Work. Based on this representation, Owner has agreed not to include within the Contract Documents requirements for Contractor to maintain aircraft liability or watercraft liability insurance. Contractor agrees that it shall not, under any circumstances, use any Aircraft or any watercraft or allow any Subcontractor or other party to use any Aircraft or any watercraft in connection with the Work without the prior written consent of Owner. As a condition to granting such consent, Contractor shall obtain and shall deliver certificates of insurance for aircraft liability and/or watercraft liability insurance coverage from an insurer, with a coverage amount and in a form reasonably acceptable to Owner.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

Subparagraph 12.1.1: Insert in the second and fourth lines the words "Owner's or" immediately before the word "Architect's". In addition, insert "Owner or" before the word "Architect" in the fourth line.

Subparagraph 12.1.2: Insert the words "Owner through the Architect or" immediately prior to the word "Architect" each time the latter word appears.

12.2 CORRECTION OF WORK

Subparagraph 12.2.1: Insert the words "Owner through the Architect or" immediately prior to the word "Architect" in the second line.

Subparagraph 12.2.2: Delete the Subparagraph in its entirety and substitute the following new Subparagraph:

12.2.2 If, within one (1) year after the date on which the Architect issues the final Certificate For Payment pursuant to Paragraph 9.10 above, or within such longer period of time as may be prescribed by law, or by terms of an applicable special warranty required by the Contract documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. This obligation shall survive any termination of the Contract. The Owner shall give notice reasonably promptly after discovery of such condition.

Add new Subparagraph 12.2.7:

12.2.7 The Contractor, all Subcontractors and all Sub-subcontractors shall execute and deliver to the Owner the following Warranty Acknowledgment before a Certificate of Final Completion can be issued.

WARRANTY ACKNOWLEDGMENT

(Name of Contractor, Subcontractor or Sub-subcontractor) ("Contractor") hereby agrees and warrants that all of its Work complies with the requirements of the Contract Documents. If, within one year after the date of the final Certificate of Payment (or designated portion thereof) ("Warranty Period") any of the Contractor's Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct the Work promptly after receipt of written notice from the Owner to do so. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work. This obligation shall survive termination of the Contract or the Contractor.

This Warranty shall be separate and in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty, and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations which the Contractor, Subcontractor or Sub-subcontractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or any proceeding commenced. Contractor's warranty shall be for the Warranty Period. If any special warranty continues beyond the Warranty Period, Contractor shall take whatever steps are reasonably required to assign all the benefits of such special warranty to Owner.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.4 RIGHTS AND REMEDIES

Add a new Subparagraph 13.4.3:

13.4.3 To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses, economic losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, excluding any proportionate amount of any claim, damage, loss or expense which is caused by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type or damages, compensation or benefits payable or for the Contractor or a Subcontractor under workers' or workmen's compensation acts or other employee benefit acts.

13.5 TESTS AND INSPECTIONS

Subparagraph 13.5.1: Delete Subparagraph 13.5.1 in its entirety and substitute the following new subparagraph:

13.5.1 Inspections and tests required to establish compliance with the Contract Documents, except as may be otherwise provided in the Contract Documents, will be made by a prequalified, independent testing agency to be selected by the Owner and Architect and employed by the Owner. The cost of the initial services of such agency will be paid by the Owner. When the initial tests indicate non-compliance with the Contract Documents any subsequent retesting occasioned by non-compliance with the Contract Documents shall be performed by the same agency and the cost thereof borne by the Contractor. [Refer to Division 1 - General Requirements of the Specifications for additional provisions regarding inspections and tests.] Inspection or Testing performed exclusively for the Contractor's convenience shall be the sole responsibility of the Contractor.

13.6:

Subparagraph 13.6.1: Delete in its entirety.

ARTICLE 14
TERMINATION OR SUSPENSION OF CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

Subparagraph 14.1.1; in line two delete the word "30" and substitute the word "60".

Add new paragraph 14.4 and subparagraphs 14.4.1, 14.4.2 and 14.4.3:

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 Cease operations as directed by the Owner in the notice, vacate the Project site and remove all equipment and materials therefrom;

.2 Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner, as the Contractor's sole remedy and compensation hereunder, for the Work completed to the effective date of the termination of the Agreements contained with the Contract Documents. In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Agreements contained within the Contract Documents pursuant to this provision.

EXHIBIT "B"

RECEIVED NOV 26 1991 MARTINA MECHANICAL ENTERPRISES

RECEIVED JAN 9 1992 KOLL CONSTRUCTION

Koll Construction

SUBCONTRACT AGREEMENT

Insurance Needed ☒ OK ☐

Job Name: City Front Terrace

Title of Work: Plumbing

KC Vendor Number: 27852

KC Subcontract Number: 1201-15400

THIS AGREEMENT, hereinafter called the Subcontract, made this 22nd day of November, 19 91 by and between MARTINA MECHANICAL ENTERPRISES (US), INC. hereinafter called the Subcontractor, and KOLL CONSTRUCTION, hereinafter called the Contractor.

WITNESSETH:

That the Subcontractor and the Contractor for the considerations hereinafter named agree as follows:

A. The Subcontractor agrees to furnish all labor, material, supplies, equipment, services, machinery, hoisting equipment, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein ("Work") in connection with the construction of the

City Front Terrace
400 West Harbor Drive
San Diego, CA 92112

("Project")

in accordance with the Contract Documents (as defined in the General Terms) and the General Terms hereof, Forms K-100B through K-100E dated 10/89 attached hereto, all of which shall become a part of this Subcontract and all of which the Subcontractor hereby certifies he has read and knows the contents thereof.

B The Subcontractor's work shall include, but not necessarily be limited to:

Plumbing work in accordance with plans and specifications listed in Attachment "A" dated November 22, 1991 and requirements as set forth in Attachment "B" dated November 22, 1991 both attached hereto and made a part hereof.

Submit invoices in accordance with General Terms and include as backup the Trade Payment Breakdown as per Attachment "C".

Revisions to the Koll Construction General Terms as per Addendum "A" dated November 22, 1991.

Additional Insureds as listed in Attachment "D" dated November 22, 1991.

The attached Subcontract Agreement is not to be changed, added to or altered in any way. Should there be any changes required and agreed to by all parties, a Change Order to the Subcontract will be issued.

C. Subcontractor Shall Not furnish a subcontract bond in accordance with Article 23 of the General Terms.

D The prime contract contains a liquidated damages clause in the amount of $ -0- per day for which the Subcontractor shall be liable as provided in Article 9 of the General Terms.

E In consideration of the faithful performance by the Subcontractor of all the terms, conditions and requirements of this Subcontract, the Contractor agrees to pay the Subcontractor the sum of ($ 17,475.00 - Seventeen thousand, four hundred seventy five and no/100------------) in current funds subject to additions and deductions for changes as may be agreed upon, from funds received from the Owner. All payments shall be in accordance with and subject to the provisions of the General Terms incorporated herein. (See paragraph 28.)

F. In compliance with Federal and State Regulations, the following subcontractor information is required:
Subcontractor operates as a corporation (Sole Prop, Partnership, Corporation) Federal Tax I.D. No. 33-0249790 State Contractors License No. 518460

G. Subject to the provisions of paragraph 12 (b) hereof, it is agreed that the venue and forum of any litigation or arbitration proceeding under this Subcontract shall be in the County of San Diego.

I have read the above information and hereby certify that to the best of my knowledge it is complete and accurate.

TKCC, Inc. A California corporation
dba: KOLL CONSTRUCTION

By: [signature]
Title. Jack L. Wiler
Sr. Project Manager
Contractor State License No.. 491751
Address 7330 Engineer Road
San Diego, CA 92111
Telephone: (619) 292-5550

Subcontractor: MARTINA MECHANICAL ENTERPRISES (US), INC.
By: [signature]
Wayne DeCussemé
Title: Operations Manager
Address: 350 Pauma Place
Escondido, Ca 92029
Telephone: (619) 741-1390

DK 03255

Remittance Address if difference than above.

K-100A
4/90 AM MW/cab

Contractor

Exhibit B
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MVA003581

1 INSURANCE [hole punch] Subcontractor does any work at or prepares or delivers material [hole punch] of construction, the Subcontractor shall provide to the Contractor [hole punch] of Insurance evidencing coverage acceptable to Contractor in am[hole punch] as required by the specifications or as follows, whichever is greater:

(a) Worker's Compensation: As required by the laws of the state in which their work is to be performed, including a Waiver of Subrogation endorsement in favor of the Owner and the Contractor.

(b) General Liability: Comprehensive General Liability on an occurrence form (Claims Made coverage not acceptable) insuring personal injury and property damage against the hazards of Premises and Operations, Products and Completed Operations, Independent Contractors and Contractual Liability (specifically covering the Hold Harmless Agreement set forth in Section (e) of this Article 1) and the following minimum limits of liability:

Personal Injury and Property Damage	$1,000,000 each occurrence and $1,000,000 aggregate

(c) Hazardous Operations: When the work of this Subcontractor involves any subsurface activities, the subcontractor shall provide liability coverage for explosion, collapse, and underground hazards (XCU) with the minimum limits listed above. Other hazardous operations, as determined by the Contractor may require other coverage and/or higher limits of liability.

(d) Automobile Liability: Comprehensive Automobile Liability having owned, hired, and non-owned automobiles with the minimum limits of $1,000,000 combined.

(e) Hold Harmless Agreement: Subcontractor shall assume liability and indemnify the Contractor and Owner, from and against any liability and all loss, costs, damages, expenses, including attorney's fees, on account of claims for personal injury, including death, sustained by any person or persons whomsoever, including employees of Subcontractor, and for injury to or destruction of property of the person or organization, including loss of use thereof, arising out of the performance of the work under this Subcontract, excepting only such matters caused solely and exclusively by the active negligence or the willful misconduct of the Contractor.

The Subcontractor's insurance afforded under (b) and (c) above shall include the Contractor and Owner as Additional Insureds. Additionally, the following clause is to be added: "The insurance afforded to the Additional Insureds is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy cannot be reduced by the existence of such other insurance."

The Certificate evidencing the above required coverages shall provide that such coverage not be cancelled or reduced except by written notice to the Contractor and Owner at least thirty (30) days prior to the effective date of such cancellation or material reduction in coverage. New or renewal Certificates shall evidence all of the above required coverages.

2. SUBCONTRACT DOCUMENTS:

(a) The terms "Contract" and "Prime Contract" as may be used herein refer to the Contract between the Owner and Contractor for construction of the Project.

(b) The term "Contract Documents" as used herein refers to the "Contract" between the Owner and the Contractor, together with all Drawings, Specifications, General Conditions, Supplemental General Conditions, Special Conditions, Addenda, Amendments and all other instruments issued by or on behalf of the Owner and/or prepared by the Architect for the Project, together with all other documents or instruments referred to in the aforesaid "Contract" and "Contract Documents."

(c) The term "Subcontract" as used herein refers to this Subcontract together with any exhibits, attachments or addenda, including without limitation all of the General Terms incorporated herewith and referred to herein.

(d) The term "Subcontract Documents" as used herein refers to the "Contract", "Contract Documents", and "Subcontract."

(e) In the event of a conflict between any of the Subcontract Documents, the documents shall take precedence in the following order and the one taking precedence controls over the one(s) following:

(i) The Contract, together with all Change Orders, modifications and exhibits;

(ii) The Contract Documents in the order listed in the Contract;

(iii) The Subcontract, together with all Change Orders and exhibits; provided, however, the Subcontract shall control when the provisions of the Subcontract require stricter performance by the Subcontractor.

(f) Subcontractor specifically agrees to perform in accordance with the provisions of the "Contract Documents", provided, however, nothing in the Contract Documents shall be construed to limit any and all actual damages that may be incurred by Contractor and recovered by Contractor from Subcontractor as a result of any default by Subcontractor. Subcontractor agrees that he has read the "Contract Documents" and copies were made available for Subcontractor and Subcontractor agrees and acknowledges that he shall similarly make copies of such Documents available to his Sub-Subcontractors, if any, and that all such Sub-Subcontractors will agree to be bound by the Contract Documents and the Subcontract Documents.

3 WORKMANSHIP

(a) Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several [hole punch] all material and equipment used in the work herein descr[hole punch] be furnished in ample quantities to facilitate the proper a[hole punch] [illegible] execution of the work and shall be new and the best of [illegible] respective kinds, except such materials as may be expressly provided for in the Contract Documents to be otherwise.

(b) If in the execution or performance of this Subcontract the Subcontractor shall fail to perform the Work in accordance with the terms, conditions, provisions or covenants of the Subcontract Documents, shall have performed any of the Work carelessly or negligently and/or shall have violated any laws, rules, orders, regulations or ordinances applicable to the Subcontractor's Work hereunder, then the Subcontractor shall fully indemnify and hold the Contractor harmless from any and all actions, damages, liabilities, claims and expenses, including without limitation attorneys' fees asserted against and/or paid or incurred by the Contractor, as a result of any such failures, negligence, carelessness, or violations committed by the Subcontractor in the execution or performance of the Work hereunder.

4 SATISFACTORY EMPLOYEES: The Subcontractor shall employ labor satisfactory to the Contractor. Subcontractor shall remove or cause to have removed from the project any employee or employees who are considered unsatisfactory by the Contractor.

The Subcontractor at all times during the progress of the work outlined in this Contract shall have a representative at the job site who is authorized to receive orders, to make decisions regarding the work to be performed, and be responsible for the total scope of work included in this Subcontract.

Subcontractor warrants that, with respect to carpentry, cement masons, teamster, ironworker, operating engineer and laborer work, as such work is defined in the appropriate AFL-CIO or Teamster Master Labor Agreements, to be done at the site of construction, alterations, painting or repair of a building, structure or other work, Subcontractor and Subcontractor's subcontractors of every tier, have and will continue to have for the duration of this Agreement, a valid, appropriate and current labor agreement with the appropriate union, or subordinate body affiliated with the Building and Construction Trades Department, AFL-CIO, or with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or an affiliate thereof. It is agreed that all such work performed by Subcontractor and Subcontractor's subcontractors of every tier shall be rendered in accordance with the terms and conditions of said labor agreements. Any breach by Subcontractor or Subcontractor's subcontractors of every tier of such labor agreement shall constitute a breach of this Subcontract.

5 PROVISIONS FOR INSPECTION AND AUDIT: Subcontractor shall furnish to Contractor and its representatives ample facilities at all reasonable times for inspecting materials at the site of construction, at the shops or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. Subcontractor shall further furnish to Contractor as often as required, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture, said reports to show the progress of such preparation and manufacture in such detail as may be required by Contractor, including any plans, drawings, or diagrams in course of preparation. The Contractor shall be afforded access to all the Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Subcontract, and the Subcontractor shall preserve all such records for a period of three years, or for such longer period as may be required by law, after the final payment. Subcontractor agrees that Contractor, its agents or representatives of any union with which Subcontractor has a collective bargaining agreement or with which Contractor has a collective bargaining agreement affecting or covering all or some portion of Subcontractor's Work shall have the right at any reasonable hour to inspect, copy or audit, the books and records of the Subcontractor, without any pertaining to the Subcontractor's payment of all required benefits to such unions or union trusts pertaining to the Subcontractor's Work on the Project. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not exercise its right to inspect, copy or audit the books and records of the Subcontractor until such time as Contractor determines, in its reasonable judgement, that there may be a discrepancy in the recordkeeping of the Subcontractor or that a dispute has arisen that may be resolved by Contractor's inspection of such books.

6. INDEMNIFICATION FROM PATENT RIGHTS: Subcontractor shall indemnify and hold Contractor harmless against any claim, suit or action, or any alleged violation or infringement of patent rights which may be made against Contractor by reason of the use in connection with or as a part of the performance of the work of the furnishing of the materials hereunder, of anything which is now or may hereafter be covered by patent, copyright or trademark, and also for all expense, including attorneys' fees, which Contractor may incur in defending or adjusting any such claim, suit or action.

7 TIME: Time is the essence of this Agreement. Subcontractor agrees to punctually and diligently perform all parts of his work at the time scheduled by the Contractor, which shall be subject to change by the Contractor as deemed necessary or convenient to the overall progress of the Project. In this connection, Subcontractor agrees that he will keep himself continually informed of the progress of the job and will, upon his own initiative, confer with the Contractor so as to plan his work in coordinated sequence with the work of the Contractor and of others and so as to be able to expeditiously undertake and perform his work at the time most beneficial to the entire Project; however, he shall not proceed with any phase of his work ahead of the time designated by the Contractor.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples and all other things necessary and incidental to the prosecution of his work in conformance with the said progress schedule. He shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, and of the Contractor in a manner that will facilitate the efficient completion of the entire work. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of Subcontractors on the premises. If the Project is divided into parts, Subcontractor will perform several or all parts simultaneously, if required by Contractor.

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If the [illegible]actor be not in default in any of the provisions hereof, and in order to [illegible] the final completion of the building, or special work [illegible], the Contractor directs the Subcontractor to work overtime [illegible] shifts, it is agreed that the Subcontractor shall work said overtime, [illegible] shifts, and it is understood that the Contractor is to pay only the actual extra cost over the rate for regular time of said overtime. Time slips covering said overtime must be checked and approved daily by the Contractor's authorized agent at the building. No overhead or profit is to be charged by the Subcontractor for said overtime.

If the Subcontractor is behind in the work hereunder, fails or refuses to supply sufficient workmen, or to deliver materials or equipment on schedule, and delays progress of the work, or if the different parts thereof are not commenced, performed, finished and delivered on time, the Contractor shall have the right to direct the Subcontractor to furnish additional labor and expedite deliveries of material and equipment at Subcontractor's cost and expense. If such additional labor is not available, the Contractor has the right to require Subcontractor at the latter's cost, to work overtime or additional shifts (and/or weekends and holidays) to such an extent as will be sufficient to speed up and complete the work on schedule.

8. RECOURSE BY CONTRACTOR. In the event that Subcontractor at any time refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials of proper quality, or in effect be adjudicated a bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors, without Contractor's consent, or fails to make prompt payment to his materialmen and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or otherwise fails to perform fully any and all of the covenants and obligations herein contained, Contractor may, at his option, after giving twenty four (24) hours written notice to the Subcontractor, provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Agreement; or Contractor may, at his option, terminate the Subcontractor's right to proceed with the work and, in that event, Contractor shall have the right to enter upon the premises of the Project or the Subcontractor's warehouse and take possession, for the purpose of completing the work included under this Agreement, of all materials, tools and appliances thereon, and may employ any other person or persons to finish the work and provide the materials therefor. In case of such discontinuance of the Subcontractor's right to proceed with the work, said Subcontractor shall not be entitled to receive any further payment under this Agreement until the work undertaken by the Contractor in his prime Contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by the Contractor in finishing the Subcontractor's work, such excess shall be paid by the Contractor to the Subcontractor, but, if such expense shall exceed such unpaid balance, then the Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds such unpaid balance. The expense incurred by the Contractor as herein provided, either for furnishing materials or for finishing the work, and any damages incurred by Contractor by reason of Subcontractor's default shall be chargeable to, and paid by Subcontractor, and Contractor shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. If Contractor elects not to terminate Subcontractor's right to proceed, Subcontractor agrees to reimburse Contractor or other Subcontractors for losses or damages resulting from the delay in speedy progress of work.

9. DAMAGES CAUSED BY DELAYS. The prime contract contains a liquidated damages clause [illegible] Should the Subcontractor default [illegible] causing delay in the entire work, he shall be liable for any and all liquidated damages including but not limited to liquidated damages sustained thereof by the Contractor. The Subcontractor shall be liable under this paragraph even though such default is caused by strikes, lockouts, acts of God or other causes beyond the control of Subcontractor, unless the Subcontractor gives written notice of the delay to Contractor within [illegible] days following the start of the delay occurrence. Contractor shall not be liable to Subcontractor for loss or damages resulting from the aforementioned causes, or for Contractor's delay or for modification or extension of the schedule made at the sole discretion of Contractor, or for losses or damages resulting from Hold or Change Orders issued by Owner, or for delays caused by other Subcontractors.

10. TERMINATION OF AGREEMENT. Contractor reserves the right to terminate this Agreement in the event that the General Contract is terminated by Owner or the Project is substantially destroyed by fire or other catastrophe. In the event of such termination, Subcontractor shall be entitled only to payment in the lesser amount of either:

(a) Cost of the work actually completed plus 15% of cost of the work actually completed for field supervision, overhead and profit.

(b) A percentage of this Subcontract amount which reflects the value of work actually completed in proportion to the Subcontract amount.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to Subcontractor prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to any claim, or claim of lien against Contractor or against Owner for any additional compensation or damages in the event of such termination. This Agreement shall become null and void, and of no effect in the event the Contractor shall not be awarded the General Contract or if for any reason beyond its control Contractor shall be unable to undertake performance of said General Contract or if the Architect or Owner objects to Subcontractor.

11. LIENS. Subcontractor shall at all times indemnify and save Contractor and Owner harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for attorney's fees, premiums for Bonds required by title company or Owner and all incidental or consequential damages resulting to Contractor or Owner from such claims. Further, in case suit on such claim is brought, Subcontractor shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any suit or lien to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien to be removed or dismissed and the cost thereof, together with [illegible] attorney's fees shall be [illegible] and payable to Contract[illegible] Subcontractor Subcontractor may [illegible] lien or suit above desc[illegible] provided he causes the effect thereof removed promptly, in advance, from the premises above mentioned, and further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens [illegible]. Notwithstanding anything to the contrary set forth above in this paragraph, Subcontractor shall not be construed to be foregoing its own [illegible] event of a dispute over payments due for services rendered and materials furnished to the Project.

12. DISPUTES.

(a) Contractor-Subcontractor Disputes. All claims, disputes, other matters in question arising out of or relating to this Contract, or the breach thereof that exceeding the accumulative sum of $10,000 shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, provided, that any award must be based upon the terms herein and the rules of law applicable to the law of such dispute. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The parties, however, reserve the right to conduct discovery under the Code of Civil Procedure with regard to any claim filed and irrespective of the Construction Industry Arbitration Rules of the American Arbitration Association and/or prevailing statutory law. The award rendered by the arbitrators shall set forth their findings of the facts and shall be final and binding, and the judgment may be entered upon it in any court having jurisdiction thereof. Under no circumstances shall the arbitrator or arbitrators have any power, jurisdiction, or authority to award punitive or exemplary damages to any party.

(b) Owner Involved Disputes. In the event that any claim shall be made by the Owner against the Contractor that any part of the work performed by Subcontractor hereunder is defective or fails to conform with the plans and specifications, Subcontractor shall perform work necessary to correct defective work or work not in conformity with the Contract Documents to the satisfaction of Owner, make repairs to the work of other trades damaged by the rework of Subcontractor, and if Subcontractor disputes the claim of the Owner, Subcontractor shall notify Contractor that Subcontractor is performing work under protest, and submit to Contractor a demand for compensation for extra work which Contractor will submit to Owner. In the event that the Owner shall dispute any charge made to him by the Contractor to cover Subcontractor's demand for extra work or any item of expense not included in the Subcontract price (in the opinion of the Subcontractor), Subcontractor agrees that he will assume the burden of prosecuting such claim in the Contractor's name against the Owner.

Notwithstanding any contrary provision above concerning venue, forum, [illegible] if any dispute between Owner and Contractor shall be submitted to arbitration or litigation, the Contractor may, by written notice to Subcontractor, before the actual commencement of any such arbitration hearing or trial [illegible] involving Owner and Contractor, require that the question of responsibility of the Subcontractor and/or of the rights and obligations of the Contractor and Subcontractor with respect to one another [illegible] disputes, pending or otherwise, between Contractor and Subcontractor [illegible] be submitted likewise, before the same tribunal and determined collaterally to the decision upon the dispute between Contractor and Owner [illegible] shall be resolved [illegible] Subcontractor agrees to fully cooperate and act [illegible] with the rights and election of Contractor hereunder. The decision [illegible] arbitration or litigation shall be final and in the case of arbitration [illegible] as a judgment by any court of competent jurisdiction.

13. CHANGES IN THE WORK. The Subcontractor hereby agrees [illegible] nullifying the original Contract, to make any and all changes or deviations from and additions to the original plans and specifications when specifically ordered by the Contractor to do so in writing. Furthermore, the Subcontractor, prior to commencement of revised work, shall submit within [illegible] to the Contractor written copies of his firm cost or credit proposal for revised work. Subcontractor will support all claims for Changes with detailed breakdown showing differences in quantity and value of labor and materials involved.

The time of completion will remain fixed, unless expressly otherwise stated in a Change Order. If the time is extended, all added costs for same will be included in the original claim for the Changes, otherwise such added costs will not be subject to reimbursement.

Should the Contractor elect to have any extra work performed on a time and material basis, in lieu of unit prices or a negotiated lump sum, [illegible] notify the Subcontractor in writing, and Subcontractor will perform the [illegible] actual net cost plus overhead and profit with or without a maximum guarantee total cost [illegible] at the Contractor's option. The Subcontractor's markup for overhead and profit will not exceed 15% including field supervision, tools and plant, unless agreed to by the Contractor in advance of commencement of work.

Charges for time and material must be supported by records [illegible] approved daily by Contractor's superintendent. Subcontractor will permit Contractor to audit its books, records, estimates, orders and files as necessary to check and verify charges and credits involved.

The Subcontractor shall adhere strictly to the plans and specifications unless a change therefrom is authorized in writing. In such case [illegible] of said change shall be understood and agreed upon in writing by the Contractor and Subcontractor before commencement of said revised work. Additional work or deviation from the plans and specifications [illegible] written authorization will not be subject to reimbursement. [illegible] indicated or necessary to complete the project shall be [illegible] as ordered by the Contractor and the proper [illegible] shall be submitted immediately thereafter, to the Contractor [illegible]

14. ASSIGNMENT OF CONTRACT. Subcontractor shall not [illegible] prior written consent of Contractor, which consent can be [illegible] at Contractor's sole discretion, assign, transfer, or sublet [illegible] of Subcontractor's work, nor assign any payments to [illegible] all labor, materials, and equipment necessary for the performance [illegible] Agreement. Should Subcontractor wish to assign, transfer [illegible]

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[illegible] portion of Subcontractor's work, his request must be made in [illegible] in writing. Subcontractor's request to assign shall include the submittal [illegible] Subcontractor of (i) the proposed assignee's qualifications (financial and experience) (ii) the written contract between the Subcontractor and Assignee and (iii) a certificate of insurance naming Owner and Contractor as "Additional Insureds" and evidencing the same coverage identified in Article [illegible]. Contractor may assign or transfer the whole or any part of this Agreement, its rights hereunder, to any corporation, individual, or partnership which it may designate.

15. ACCEPTANCE OF WORK PERFORMED BY OTHERS. The Subcontractor shall carefully inspect and approve the work performed by others that is to receive, align, abut or similarly relate to the work of this Subcontract. If the Subcontractor finds the work performed by others to be unacceptable, he shall notify the Contractor in writing. If the Subcontractor commences the work of this subcontract, such commencement shall constitute acceptance of the work performed by others.

16. PROTECTION OF SUBCONTRACTOR'S OWN WORK. The Subcontractor shall effectually secure and protect the work to be done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the workmen of the General Contractor, and other subcontractors directly from his operation and from the results therefor.

17. RESPONSIBILITY FOR DAMAGES TO WORK IN PLACE. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on job site caused by him or his agents, employees or guests. The Subcontractor shall be entirely responsible for any loss (including theft) or damage done to his work, materials, tools, equipment and other appliances in any manner whatsoever, even though the particular work damaged may be finished at that time and the Subcontractor may be working in some other portion of the premises.

18. LAYOUT RESPONSIBILITY. The Contractor shall establish principal axis lines and levels whereupon the Subcontractor shall lay out and shall be strictly responsible for the accuracy of his work and for any loss or damage to other contractors engaged in work on the site by reason of failure of the undersigned Subcontractor to set out or perform his work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

19. CLEAN-UP. At all times during the course of construction, the Subcontractor shall maintain the premises in a clean, safe and orderly condition. Rubbish, waste material and surplus material will be collected or removed daily, or less frequently, as the Contractor may require. Upon completion of the work under this agreement, the Subcontractor shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If the Subcontractor fails to perform a clean-up function within twenty-four (24) hours after notification by the Contractor to do so, the Contractor may proceed with that function as he adjudges necessary and in the manner he may deem expedient, with the understanding the cost thereof shall be charged to the Subcontractor and deducted from monies due under this Agreement. Notification to Subcontractor's Foreman or Superintendent will be considered proper notice.

20. USE OF CONTRACTOR'S EQUIPMENT, LABOR, ETC. In the event Subcontractor shall use Contractor's equipment, labor, facilities, hoists, elevators, utilities, power, light, water, ladders, scaffolding, etc., he shall reimburse Contractor at a predetermined rate, unless otherwise stated herein. Further, that in so doing, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from any claims, actions, demands, damages, liabilities, or expenses, including legal fees, resulting from the use of same by said Subcontractor or his agents, employees, or permittees, including injuries caused by unsafe conditions, whether caused by negligence of Contractor, his Agents, Employees, or otherwise.

Contractor shall have the right to utilize the Subcontractor's facilities, equipment or scaffolding at no additional cost thereto. If the Subcontractor is directed to supply facilities of greater capacity, or for a longer duration than required for the work hereunder, the Contractor will pay its proportionate share of the costs, such proportions to be fixed by the Contractor.

21. GUARANTEE. Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee Form, will guarantee all materials and workmanship and agrees to replace at his sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, loss or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound, as specified. All guarantees will inure to the benefit of the Contractor, Owner, their successors or assigns, including equipment warranties.

(a) Additional terms applicable to Roofing, Sheetmetal, Caulking and/or Waterproofing Subcontracts: Subcontractor agrees to maintain roofing, waterproofing, gravelstops, flashings and counter flashings in a watertight condition for the number of years specified in the Contract Documents and in any case not less than 2 years. If the waterproofing or roof leaks, the Subcontractor agrees to make the necessary permanent repairs immediately to produce a watertight condition and agrees to reimburse the Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or decorating, etc., caused by the leaks. Subcontractor will remove and replace any work necessary to gain access to the roofing or waterproofing membranes being maintained hereunder.

(b) Additional terms applicable to Plumbing, Heating, Air Conditioning, Electrical, Fire Sprinkler or Process Piping Subcontracts: Subcontractor shall be responsible for all damages to the building, furnishings and all improvements included in the General Contract caused by leaks in the piping or conduit systems installed hereunder, or due to leaks where pipes or conduit go through walls or slabs where the joints around such pipes or conduits are to be watertight. The Subcontractor shall repair at his expense all damage so caused or will reimburse the Contractor for any costs required to repair water damage to the walls, [illegible] fixtures, furnishings, paintings or decor, etc., caused by [illegible] leaks.

(c) Additional terms applicable to Glass and Glazing, Curtain or Window Wall, or Store Front Subcontracts: Subcontractor will be responsible for all damages to the building and furnishings, and to improvements, caused by leaks through, under or around [illegible]. Subcontractor will remove and replace the work as required to gain access to sources of leakage to be corrected hereunder.

22. JURISDICTIONAL DISPUTES.

(a) The Subcontractor accepts and agrees to be bound by the procedures, rules and regulations and decisions of the appropriate [illegible] specified in the appropriate labor agreements for the settlement of jurisdictional disputes and will immediately comply with any decisions of said tribunals which affect the performance of work [illegible] by the Subcontract. Subcontractor agrees to bind, by written contract, all of his subcontractors of every tier to said procedural rules, regulations and decisions of said tribunals in the same manner and to the same effect as provided herein with respect to Subcontractor.

(b) During the performance of the Subcontractor's Work, the Subcontractor, its employees, Sub-Subcontractors and suppliers will use such entrance or entrances to the job site as may be designated from time to time by the Contractor.

23. BONDING OF SUBCONTRACTOR. If Paragraph C of this Subcontract Agreement requires the Subcontractor to furnish a Subcontract Bond, the Subcontractor shall, within 10 calendar days of the execution of this Agreement, furnish such Subcontract Bond on Contractor's Bond Form with a surety acceptable to the Contractor. The bond premium will be paid by Subcontractor and is included in the Subcontract amount, and any increase in the bond premium resulting from changes in the amount of the Subcontract shall be paid by the Subcontractor and included in the amount of the Subcontract change order. The subcontractor will not proceed with any work until the Subcontract Bond is received and approved by the Contractor.

24. MATERIALS FURNISHED BY OTHERS. In the event the scope of work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory installation. Loss or damage due to acts of the Subcontractor shall be charged to the account of the Subcontractor and deducted from monies due under this Agreement.

25. SUBCONTRACTOR AS AN INDEPENDENT CONTRACTOR. Subcontractor is an independent contractor and shall, at his sole cost and expense, and without increase in the Contract Price, comply with all laws, ordinances, and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefor; pay for connections to sewers, flood control outfall, water or fire lines, electric, gas, or utility systems or assessments applicable thereto; all manufacturer's taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules, or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

No certificate given or payment made under this Agreement, except the final certificate or final payment, shall be conclusive evidence of the performance of this Contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Subcontractor has satisfied himself, by his own investigation and research, regarding all the conditions affecting the work to be done and materials to be furnished, and as to the meaning and intention of the Contract Documents referred to herein, and having his conclusions [illegible] that Subcontract on the investigation, [illegible] of any evidence or other information prepared or obtained by Owner, Architect, or Contractor [illegible] part of the Project. No [illegible] of Subcontractor preceding the execution, and no verbal agreement or conversation with any representative of Owner, Architect, or Contractor, either before or after the execution of this Subcontract, shall affect or modify any of the terms or obligations contained herein.

The Subcontractor shall promptly notify the respective departments or official bodies when all work is ready for inspection and shall, at once, do all work required to remove any violations or to comply with such notices without additional charge to Contractor. The Subcontractor shall perform all work necessary to obtain approvals from the authorities mentioned [illegible] without additional cost to the Contractor.

26. SIGNS. Subcontractor will not place any temporary or permanent signs on any portion of the building, the property or fences except upon prior written authorization of Contractor.

27. TOOL SHEDS & BOXES. The Subcontractor will provide, locate, relocate, and maintain adequate sheds and/or tool boxes as designated by Contractor. Contractor will not be responsible for any clothing, tools, materials or equipment lost, damaged, stolen or destroyed.

28. PAYMENTS.

(a) It is agreed that progress payments to the Subcontractor shall be made with funds received by the Contractor from the Owner for work performed by the Subcontractor as reflected [illegible] Application for Payment and only when and if such funds are received by the Contractor from the Owner.

Approval of the Contractor's Application for Payment and payment for the work reflected therein shall be a condition precedent [illegible] must occur before the Contractor will be obligated to pay the Subcontractor. If, and only if, Contractor receives such a payment from Owner and Subcontractor complies with Provisions [illegible] below, then Contractor agrees to pay Subcontractor the said [illegible] sum on or about the 10th day of the month [illegible]

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which the [illegible] is performed, provided however, the Contractor may re[illegible] security for Subcontractor's fulfillment of this Contr[illegible] amount equal to ten percent (10%) of the value of the work c[illegible] by Subcontractor as determined by the Contractor and/or [illegible] for the purpose of subcontract progress payments. Final payment shall only be made to Subcontractor from sums received by Contractor as final payment from Owner, subject to the provisions of Paragraph (b), (c) and (d) below. Final payment to the Contractor by the Owner shall be a condition precedent which must occur before the contractor will be obligated to make final payment to the Subcontractor.

(b) The Subcontractor shall prepare and present to the Contractor, for its approval, on or before the last day of each calendar month an invoice using Contractor's form K-112 showing the amount due. Each such invoice shall contain the following:

1. A statement of the current subcontract sum including approved change orders.
2. The percentage of completion of the current subcontract sum.
3. Less retention applicable.
4. Total amount due.
5. Less previous payments.
6. The net amount due for the current period.

Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided releases executed by all persons who might have mechanic's lien, stop notice or labor and material bond rights against the project and arising out of work performed under the Subcontract, using Contractor's forms K-113 or K-114, along with evidence of payment as applicable to all unions and union trust funds. In the event Subcontractor provides a conditional release on form K-113 from any of these persons identified above, Contractor will prepare and issue a joint check for the amount indicated in such conditional release. As a condition precedent to final payment, Contractor requires Subcontractor to provide a full and final release from these materialmen and subcontractors claiming through him.

(c) The Contractor may withhold monthly progress payments, in whole or in part, in order to protect the Contractor and/or Owner from loss because of:

1. Defective work not remedied, missing materials not furnished, clean-up not performed;
2. Claims filed or reasonable evidence indicating probable filing of claims, including claims covered by insurance until such claims are accepted by carrier;
3. Failure of Subcontractor to make payments properly to his Subcontractors, or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other claims growing out of the work;
4. Reasonable doubt that the work can be completed for the unpaid balance of the contract sum;
5. Damage to another Subcontractor, and/or Contractor;
6. Reasonable indication that the work will not be completed on schedule or within the contract time;
7. Unsatisfactory prosecution of the work by the Subcontractor;
8. Failure to deliver as built drawings, written guarantees or warranties; or
9. Failure to obtain the approvals required by any authority having jurisdiction.
10. Work performed at the site of construction by Subcontractor, its subcontractor(s) or the employees of either of them prior to providing Contractor with the following which must be acceptable to Contractor: (A) Certificates of Insurance and (B) Subcontract Bond, when required.

When the above grounds are removed by Subcontractor, payment shall be made for the amounts withheld because of them. Contractor may require that Subcontractor furnish releases in a form satisfactory to Contractor for all claims made under (c) 2 and 3 above, and/or supporting invoices, receipts or other records to substantiate the amounts owing or paid as Contractor may require.

No progress payment, nor any partial or entire use, or occupancy of the project by the Owner, shall constitute an acceptance of any work not in accordance with the Subcontract.

(d) The balance owing to the Subcontractor under the terms of this Agreement shall be due and payable thirty-five (35) days after completion and acceptance of the project, and the removal of all grounds for withholding enumerated under 28 (c) above, and satisfactory proof that all claims, including taxes, growing out of the work hereunder (and any liens related thereto) have been released.

(e) Any and all funds payable to the Subcontractor hereunder are hereby declared to constitute trust funds in the hands of the Subcontractor, to be applied first to the payment of claims of his subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds filed and premiums on insurance accruing during the construction of the described work, before application to any other purpose.

29. RISING COSTS. The Contractor agrees to pay the sum herein set forth in current funds for such work and materials and in the manner and at the times hereinafter forth. Said sum is intended to include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing taxes, labor, materials, and transportation costs, all of which are to be borne solely by the Subcontractor. All loss or damage arising from any of the work performed under this Contract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same or through the action of the elements, shall be borne by the Subcontractor. It is mutually agr[illegible] the parties hereto that no payment made under this Contract, [illegible] conclusive evidence of the performance of this Contract, either wholl[illegible] part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

30. NO DELAY BY CONTRACTOR. Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of this Agreement, the performance of any work, the delivery of any material, the payment of any monies to Subcontractor, or otherwise, the Subcontractor agrees that it will not directly or indirectly stop or delay any work or part of work on its part required to be performed, or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy, regardless of whether such controversy, dispute or question is subject to arbitration or litigation.

31. SAFETY.

(a) The Subcontractor shall, at its own cost and expense, protect its own employees, employees of Contractor and all other persons from risk of death, injury or bodily harm arising out of or in any way connected with the work to be performed hereunder, and Subcontractor shall strictly comply with all safety orders, rules, regulations or requirements of all federal, state and local government agencies exercising safety jurisdiction over said work including, but not limited to, the federal and state OSHA REGULATIONS and shall comply fully with all of Contractor's safety requirements, policies and rules. Subcontractor shall indemnify and save Contractor harmless from any liability, loss, cost, damage or expense, including attorneys' fees, which Contractor may suffer or incur as a result of any cause of action, proceeding, citation or work stoppage arising out of or in any way connected with the alleged violation by Subcontractor of any such safety order, rule, regulation or requirement, whether such violation is ultimately proved or not.

(b) If Subcontractor or its personnel do not comply with all safety requirements applicable to the Project, Contractor may, but shall not be obligated to, give written notice of violation to Subcontractor. If Subcontractor has not caused its performance to come into compliance with such safety requirements within twenty-four (24) hours (or, in the event compliance cannot be completed within twenty-four (24) hours, the immediate commencement and continued effort of such action as may be necessary to obtain compliance within a reasonable time from commencement) after such written notice has been presented to Subcontractor, without prejudice to any other remedy available to Contractor hereunder, payment on this Subcontract will be withheld until such time as compliance has been obtained to the safety requirements which was the subject of the written notice of violation and satisfactory assurances, reasonably acceptable to Contractor, have been given by the Subcontractor to insure that the Subcontractor and its personnel engaged on the Project will comply with all safety requirements in the future.

32. REQUIREMENTS PRIOR TO COMMENCEMENT OF WORK. Subcontractor shall not proceed with any work nor receive payment under this Subcontract until, among other things, the Contractor has received a fully executed copy of this Subcontract Agreement together with appropriate insurance certificates and a Subcontract bond, if required.

33. ATTORNEY FEES. If either party becomes involved in litigation or arbitration arising out of this Subcontract or the performance thereof, the court or arbitration panel in such litigation or arbitration, or in a separate suit, shall award attorney fees to the prevailing party. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorney fees paid or incurred in good faith.

34. NOTICES. Any notices required or permitted under the Subcontract shall be in writing and shall be deemed duly served if either hand-delivered or given by certified mail, return receipt requested, addressed to the address contained in the Subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice mailed shall be deemed received the date the return receipt is signed.

35. GENERAL.

(a) Section headings herein are inserted only for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provisions of the Subcontract.

(b) All previous oral or written promises, agreements, and representations relating to the Subcontract are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Subcontract, into which the Subcontract Documents have been incorporated, shall constitute the full and complete agreement between Contractor and Subcontractor.

(c) If any term or provision of this Subcontract shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Subcontract shall be valid and shall be enforceable to the fullest extent permitted by law.

(d) All covenants, agreements, indemnities, guaranties and warranties made by the Subcontractor shall survive completion of the work [illegible] the Subcontract, and any payment by the Contractor [illegible] in part.

(e) No waiver by Contractor, whether expressed or implied, of any provision of this Subcontract shall be deemed to be a waiver of [illegible] provision of this Subcontract or of any subsequent breach by Subcontractor of the same provision or any other provision.

K-100 E
2-89

Koll Construction

SUBCONTRACT AGREEMENT

Insurance Needed ☐
OK ☐

Job Name. City Front Terrace.

Title of Work: Plumbing

KC Vendor Number: ______

KC Subcontract Number: 1201-15400

THIS AGREEMENT, hereinafter called the Subcontract, made this 22nd day of November, 19 91 by and between MARTINA MECHANICAL ENTERPRISES (US), INC. hereinafter called the Subcontractor, and KOLL CONSTRUCTION, hereinafter called the Contractor.

WITNESSETH:

That the Subcontractor and the Contractor for the considerations hereinafter named agree as follows

A. The Subcontractor agrees to furnish all labor, material, supplies, equipment, services, machinery, hoisting equipment, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein ("Work") in connection with the construction of the

City Front Terrace
400 West Harbor Drive
San Diego, CA 92112 ("Project")

in accordance with the Contract Documents (as defined in the General Terms) and the General Terms hereof, Forms K-100B through K-100E, dated 10/89 attached hereto, all of which shall become a part of this Subcontract and all of which the Subcontractor hereby certifies he has read and knows the contents thereof.

B. The Subcontractor's work shall include, but not necessarily be limited to:

Plumbing work in accordance with plans and specifications listed in Attachment "A" dated November 22, 1991 and requirements as set forth in Attachment "B" dated November 22, 1991 both attached hereto and made a part hereof.

Submit invoices in accordance with General Terms and include as backup the Trade Payment Breakdown as per Attachment "C".

Deviations to the Koll Construction General Terms as per Addendum "A" dated November 22, 1991.

Additional Insureds as listed in Attachment "D" dated November 22, 1991.

The attached Subcontract Agreement is not to be changed, added to or altered in any way. Should there be any changes required and agreed to by all parties, a Change Order to the Subcontract will be issued.

C Subcontractor [illegible] furnish a subcontract bond in accordance with Article 23 of the General Terms.

D. The prime contract contains a liquidated damages clause in the amount of $ -0- per day for which the Subcontractor shall be liable as provided in Article 9 of the General Terms.

E In consideration of the faithful performance by the Subcontractor of all the terms, conditions and requirements of this Subcontract, the Contractor agrees to pay the Subcontractor the sum of ($ 17,475.00 - Seventeen thousand, four hundred seventy five and no/100) in current funds subject to additions and deductions for changes as may be agreed upon, from funds received from the Owner. All payments shall be in accordance with and subject to the provisions of the General Terms incorporated herein (See paragraph 28)

F In compliance with Federal and State Regulations, the following subcontractor information is required:

Subcontractor operates as a ______ (Sole Prop., Partnership, Corporation)

Federal Tax I D No ______

State Contractors License No. ______

G. Subject to the provisions of paragraph 12 (b) hereof, it is agreed that the venue and forum of any litigation or arbitration proceeding under this Subcontract shall be in the County of San Diego

I have read the above information and hereby certify that to the best of my knowledge it is complete and accurate

TKCC, Inc. A California corporation
dba: KOLL CONSTRUCTION

By ______

Title: Jack L. Filer, Project Manager

Contractor State License No. 491751

Address: 7330 Engineer Road
San Diego, CA 92111

Telephone. (619) 292-5550

Subcontractor: MARTINA MECHANICAL ENTERPRISES (US), INC.

By: ______

Title: ______

Address: 380 Pauma Place
Escondido, Ca 92029

Telephone. (619) 741-1390

Remittance Address if difference than above

AM

KW/cab

Project Manager

DK 03256

MVA003586

Exhibit B

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KOLL CONSTRUCTION SUBCONTRACT AGREEMENT
ADDENDUM "A"
K.C. JOB NO. 1201
November 22, 1991

This Addendum "A" to Koll Construction Subcontract Agreement is attached to and made a part of that certain Koll Construction Subcontract Agreement by and between TKCC, Inc., a California Corporation, dba: Koll Construction, referred to as Contractor, and Martina Mechanical Enterprises (US), Inc., referred to as Subcontractor. All of the terms and conditions of the Subcontract Agreement are unmodified except for the following:

A. Paragraph 1 is revised to add Draper and Kramer Incorporated as an Additional Insured in the same manner and the same extent as the Contractor and Owner.

B. In Paragraph 4, the third paragraph (requiring labor union agreements) shall apply only with respect to Operating Engineers.

C. In Paragraph 12(b), replace the word "demand" with the word "claim".

D. In Paragraph 14, identify the Additional Insureds as Owner, Contractor and Draper and Kramer Incorporated.

E. Delete the first sentence of Paragraph 21 and replace it with the following:

Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, the Subcontractor, by executing Contractor's Guarantee Form, will guarantee all materials, workmanship, design and/or engineering as it relates specifically to this project and agrees to replace at its sole cost and expense and to the satisfaction of the Contractor, any or all materials adjudged effective or improperly installed as well as guarantee the Owner and Contractor against liability, losses or damage to any or all parts of the work arising from said installation during a period of one year from completion and acceptance of the entire project.

F. In Paragraph 21(a), add the word "caulking and sealants" after the word "waterproofing" in the third line.

G. The heading in Paragraph 30 is deleted and replaced with the heading "No Delay by Subcontractor".

Except as set forth herein, all other terms and conditions of the Subcontract agreement are unmodified.

TKCC, Inc., a California corporation
dba: Koll Construction

By:____________________
Its:____________________

Subcontractor:

By:____________________
Its:____________________

DK 03257

CityFront Terrace
K.C. Job No. 1201-15400
Attachment 'A'
Bid Documents
November 22, 1991

1. Equal Opportunity Program requirements dated May 6, 1991, prepared by Koll Construction.

2. Construction Schedule pending final revisions, prepared by Koll Construction.

3. Project Specifications, prepared by Solomon Cordwell Buenz & Associates, Inc.
   Volume One - Contract General Conditions, dated 10/1/91.
   Volume Two - Civil Architectural, Structural & Landscaping revised, dated 10/1/91.
   Volume Three - Mechanical and Electrical revised, dated 10/1/91.

4. Civil Engineering drawings prepared by Rick Engineering Company, dated 8/2/91 with latest revisions Addendum 1, dated 10/1/91.

   C1.1, C1.2, C2.1 through C2.5.

5. Architectural drawings prepared by Solomon Cordwell Buenz & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

   A0.1 through A0.3, A1.1 through A1.9, A1.11, A1.12, A2.1 through A2.17, A3.1 through A3.13, A4.1 through A4.16, A5.1 through A5.28, A6.1 through A6.5, A7.1 through A7.11, A8.1 through A8.16, A9.1 through A9.5, A9.7 through A9.12.

6. Architectural lighting fixtures prepared by Francis Krahe & Associates, Inc., dated 10/1/91.

   AL1 through AL13.

7. Structural drawings prepared by John A. Martin & Associates, Inc., dated 7/31/91 with the revision Addendum 1, dated 10/1/91.

   S1.1 through S1.6, S2.1 through S2.16, S3.1 through S3.7, S4.1 through S4.7 S5.1 through S5.3, S6.1 through S6.24.

8. Structural drawings prepared by John A. Martin & Associates, Inc., dated 7/3/91 with the revision Addendum 2, Delta 10, dated 10/18/91.

   S2.1 through S2.2, S2.4 through S2.6, S2.8, S2.14, S3.1, S4.3, S4.5, S6.17 through S6.18, S6.21 through S6.22.

9. Mechanical drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

   M0.1, M0.2, M2.1 through M2.32, M3.1, M3.2, M4.1 through M4.3.

10. Mechanical drawings prepared by Frederick Russell Brown & Associates, Inc. dated 7/31/91 with revision Addendum 2, Delta 10, dated 10/18/91.

    M0.2, M2.1 through M2.4, M2.11, M2.31, M3.1.

11. Plumbing and Fire Protection drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    P0.1, P1.1, P1.2, P2.1 through P2.32, P3.1 through P3.18, P4.1 through P4.4.

12. Plumbing and Fire Protection drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with the latest revisions Addendum 2, Delta 10, dated 10/18/91.

    P0.1, P3.7, P4.1.

13. Electrical drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    E0.1, E1.1, E1.2, E2.1 through E2.32, E3.1 through E3.6, E4.1 through E4.4, E5.1, E5.2, E6.1.

14. Electrical drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 2, Delta 10, dated 10/18/91.

    E2.1 through E2.2, E2.31, E4.3 through E4.4.

15. Landscape drawings prepared by Andrew Spurlick Martin Poirier, dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    L1.1, L1.2, L2.1, L2.2, L3.1 through L3.2.

16. Soap Factory Demolition drawings prepared by Milford Wayne Donaldson, dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    SFD1.1 through SFD1.3, SFD2.1 through SFD2.6.

17. Soap Factory Architectural drawings prepared by Milford Wayne Donaldson, dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    SFA0.1, SFA2.1 through SFA2.12, SFA3.1 through SFA3.8, SFA4.1, SFA6.1, SFA6.2, SFA7.1 through SFA7.8, SFA8.1, SFA8.2, SFA9.1 through SFA9.5.

18. Soap Factory Structural drawings prepared by John Kariotis & Associates, dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    SFS0.1, SFS2.1 through SFS2.3, SFS4.1 through SFS4.4

19. Soap Factory Mechanical drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    SFM0.1, SFM2.1 through SFM2.10, SFM3.1.

20. Soap Factory Plumbing and Fire Protection drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    SFP0.1, SFP2.1 through SFP2.10, SFP3.1 through SFP3.2.

21. Soap Factory Electrical drawings prepared by Frederick Russell Brown & Associates, Inc., dated 7/31/91 with latest revisions Addendum 1, dated 10/1/91.

    SFE2.1 through SFE2.10, SFE3.1, SFE4.1, SFE4.2.

22. Shoring excavation drawings prepared by Wagner Construction engineers, dated 9/18/91.

City Front Terrace
Attachment 'B'
Contract No. 1201-15400
November 22, 1991

This Attachment 'B' is part of the Subcontract Agreement between Koll Construction, Contractor, and Martina Mechanical Enterprises (US), Inc., Subcontractor, for Contract Number 1201-15400 dated November 22, 1991.

ANY CHANGES IN SUBCONTRACTOR'S SCOPE OR DEVIATION FROM PLANS AND SPECIFICATIONS MUST BE AUTHORIZED BY THE PROJECT MANAGER.

This Subcontractor's work shall include, but not to be limited to, the following:

1. This project is subject to the City of San Diego Resolution No. R-262633 (adopted on March 4, 1985) entitled, "Minority and Women Business Enterprise Program". This subcontractor is required to abide by Koll Construction's equal opportunity program requirements. Program requirements were provided at bid time and may be obtained from Koll Construction at any time.

2. Subcontractor warrants that he has carefully reviewed all of the Contract Documents. The Contract Documents are complimentary, and what is required by any one (i.e., structural, architectural, specs, etc.) shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is reasonably inferable therefrom as being necessary to produce the intended results. Should a conflict arise in the contract Documents where a particular condition is referenced, for example, one method in structural and another method in architectural, the most inclusive method shall be considered included within the subcontract amount. Prior to proceeding with the work, the Subcontractor shall submit a written request for clarification and abide by the written response. Five (5) working days shall be allowed for written responses, prior to any impact on the schedule.

3. Subcontractor shall submit all samples, shop drawings and product data as required per specification section 01340 and other specification sections as it relates to his scope of work. It shall be the responsibility of the Subcontractor to prepare his shop drawings and fabricate materials which strictly adhere to the dimensional criteria and design information contained within the Contract Documents and subsequent written supplemental instructions. Review by the Architect, Structural Engineer, and General Contractor shall not relieve the Subcontractor of responsibility for any deviation from the requirements of the Contract Documents, unless such deviations are clearly identified as such and explicit review and approval is requested. Costs from other trades arising out of use of alternates (approved or otherwise) by this Subcontractor shall be borne by this Subcontractor. Costs resulting from corrections or modifications to correct materials or conditions which are not in accordance with the Contract Documents (nor approved in advance) shall be borne by this Subcontractor. A minimum of six (6) copies (including 1 sepia) of each submittal is required by the Contractor, unless additional sets are required by the Architect. Transmit all submittals through the Contractor.

DK 03261

4. Subcontractor shall have visited the site and be thoroughly acquainted with the conditions thereon. Failure to do so will not relieve this Subcontractor from the responsibility for properly estimating the difficulty or cost of successfully performing the work.

5. All work shall be performed in accordance with the governing agency's codes and regulations.

6. It is the Subcontractor's responsibility to coordinate his work so that a conflict does not arise with other trades. In the event of a conflict, the Subcontractor shall report it to the Contractor and receive instructions on how to proceed. If the Subcontractor fails to coordinate his work with other trades, any corrections that may be required will be at his own expense.

7. Subcontractor is responsible for all of his own clean-up on the site. All clean-up operations shall be performed on a daily basis during the course of the work to avoid delays to the following trade schedules. In the event that this Subcontractor does not perform this work in a timely manner, General Contractor shall do the work and the cost will be borne by this Subcontractor. A trash container shall be provided on the site by Koll Construction for the deposit of all debris. Upon completion of the project and prior to leaving the site, this Subcontractor must receive approval and acceptance by Koll Construction that all final clean-up requirements have been met and that the area is ready for final inspection.

8. All permits required for inspections which pertain to this scope of the work, with the exception of the excavation, foundation and building permits, shall be obtained and paid for by this Subcontractor.

9. Insofar as space will permit, Koll Construction will cooperate with Subcontractor in assigning area for material storage and field shanties. However, it is understood that during the course of construction, it may become necessary to relocate his storage area or field shanties, or give up the area if conditions warrant, in which case Subcontractor shall, at no additional cost, remove materials and vacate the area promptly.

10. All deliveries of materials to the jobsite must be cleared with the project superintendent with respect to date, time of unloading and storage area location.

11. Subcontractor shall provide all means to unload and transport materials into the project.

12. **O.S.H.A.:** Each Subcontractor is to abide by the latest State and Federal O.S.H.A. requirements for safety on the project. Copies of all Subcontractor field safety meeting minutes shall be given to the Contractor's superintendent. Field safety meetings shall be held weekly as a minimum requirement.

The Subcontractor shall obtain all special Cal and Fed OSHA permits as it relates to the work (i.e., excavation, hoisting, etc.).

13. **SAFETY:**

a. Each Subcontractor shall inaugurate and maintain an accident prevention program and an employee safety training program.

b. All employees on the job, regardless of whose payroll they are on, shall be required to respond to safety instructions/requirements from Koll Construction supervision. Persons who do not respond shall be removed from the job by the employer who carries them on his direct payroll.

c. While it is not the intention of Koll Construction to dictate the safety program of the Subcontractor, it will be mandatory that the following items be implemented by Subcontractors.

i. Hold "toolbox" or "tailgate" safety meetings with their crews each week.

ii. Written reports of safety meetings shall be submitted to the project superintendent within 48 hours after they are held.

iii. Designate a company safety representative and submit the name of same to Koll Construction project superintendent. Also the names of any employees trained in First Aid shall be turned in to form a First Aid pool.

iv. Koll Construction will have bi-weekly periodic safety meetings and all Subcontractors designated safety representatives shall be required to attend.

v. Make frequent inspections of your work areas and equipment and take whatever corrective action is necessary to secure a safe place of employment.

vi. Cooperate with other Subcontractors and Koll Construction in scheduling work so as to reduce exposure to injury.

vii. Maintain the work site in a clean, safe and orderly condition.

viii. Furnish all necessary personal protective equipment and enforce its use by their employees.

ix. Immediately report all accidents in writing to Koll Construction project superintendent.

x. Removal of barricades, floor opening protection, railings, or any other perimeter protection must have prior approval of Koll Construction. Replacement must be made by this Subcontractor's personnel immediately after temporary removal is no longer required. Subcontractor shall provide for safety of personnel during such temporary conditions and shall have such safety measures reviewed by Koll Construction representatives prior to removal of barricades.

xi. All floor, roof and wall openings/penetrations will be protected by the most stringent requirements of any of the regulatory offices. Subcontractors removing safety items will be responsible for their immediate replacement.

xii. All Subcontractors using potentially hazardous materials or substances shall evaluate the hazards of their products and prepare container hazard labels and "Material Safety Data Sheets" conveying the specific hazards, as well as precautions for safe handling and use. Subcontractors must then develop written hazard communication programs and provide workers with information and training on hazardous substances.

d. This project is designated as a **"HARD HAT AND PROPER ATTIRE PROJECT". THERE WILL BE NO EXCEPTIONS.**

e. Supervise, install, maintain, remove and/or replace appropriate safety protection as required by law and/or work.

f. All cranes shall be inspected according to local and state requirements.

g. For all activities which require preplanning to install and/or construct, (such as concrete, structural steel erection, concrete shoring, precast skin, curtainwall systems, granite skin, excavations in excess of five feet, etc.), the Subcontractor will be required to submit in writing a document referencing preplanned safe work procedures and erection sequencing before work is started. Subcontractors shall attend and participate in a trade specific preconstruction meeting for the purpose of defining and planning safety for those particular trades.

h. Additional safety requirements are noted in Koll Construction General Terms, Paragraph 31, Safety of General Terms, page 1.5-4.

i. All tools and equipment furnished by each Subcontractor shall be equipped with the appropriate safety guards and devices as designed. Modified and/or unsafe tools and equipment shall not be allowed on the project.

14. This Subcontractor is responsible for traffic control as it relates to the performance of the work under this subcontract. Material deliveries included.

15. The Subcontractor is responsible for all re-testing costs if the initial test or inspection fails.

16. Subcontractor shall be responsible for the protection of his material and installed work and for protection of the finished work of other trades. Koll Construction shall not be responsible for the care, custody and control of material or finished product between time of installation by the Subcontractor and acceptance by the Owner. If this Subcontractor's work is damaged by another Subcontractor, and it can be proven who was responsible for the damage, then the Subcontractor who caused the damaged will be responsible for any repair and/or replacement costs. This work is not to be delayed by dispute regarding cost responsibilities, the burden of proof will be on the Subcontractor whose work was damaged.

17. All work within this subcontract to be completed to the Contractors, Architects and Owner's satisfaction at the overall completion of the project.

18. The Subcontractor shall maintain a set of up-to-date record drawings and as-built drawings on the site at all times. Upon completion of the work and prior to release of retention, the Subcontractor shall submit a set of "as-built" sepias, locating by dimensions and elevations all concealed work.

19. Subcontractor shall be responsible for his own layout from major grid lines provided by the Contractor, for all of his required work.

20. Upon the Subcontractor's arrival at the jobsite, the Subcontractor's foreman must check in with Koll's job superintendent and confirm that the construction documents he has are current. Subcontractor is ultimately responsible that his field personnel have all required drawings and information.

21. The Subcontractor is aware of and responsible for the general requirements (Division 1) of the specifications.

22. All references within the project specifications to "Contractor" shall be interpreted as "Subcontractor" and shall be considered included as part of the Subcontractors work.

23. **JOBSITE COMMUNICATIONS:** Each Subcontractor shall provide his foreman (foremen) with two-way radios matching the contractor's main frequency, to allow timely communications between superintendent and foreman. This requirement is mandatory.

24. This Subcontractor shall be required to furnish all labor, materials and equipment to the jobsite in order to maintain or improve upon the General Contractor's project construction schedule, dated 11/4/91, as well as all subsequent updates.

    a. This Subcontractor shall provide at a rate of production not less than that of the preceding Subcontractors.

b. Overtime premiums shall not be paid for overtime work required to maintain the scheduled work durations of this Subcontractor.

c. Overtime premiums paid to subsequent trades to condense their required duration in order to regain lost schedule time attributed to delays by this Subcontractor shall be borne by this Subcontractor.

d. The only justifiable delays shall be:

i. Rain, where as the duration will be extended one day for each actual rain day (must cause an actual delay, work in a protected structure does not qualify).

ii. Untimely changes by the Owner, Architect, or their consultants resulting in an actual delay agreed to by all the parties.

iii. Shop drawing approval shall not be constituted as a delay. It is the responsibility of this Subcontractor to submit and gain approval of all submittals in a timely basis so as not to disrupt the order, delivery, and installation of all required materials. All submittals shall be transmitted through Koll Construction. A minimum of one (1) week shall be allowed for Contractor's review and an additional two (2) weeks for architect/engineer review (total of 15 working days).

25. **CHANGES IN WORK:** For changes to the scope of work that increase the cost of performing the Subcontractor's work, this Subcontractor will accept in full payment thereof an amount equal to the estimated direct cost of the labor, materials and equipment required to perform the changed work, plus a maximum of Fifteen percent (15%) thereof to cover all indirect costs, general and administrative expense, overhead and profit. The mark-up on work subcontracted by the Subcontractor will be limited to five percent (5%) in lieu of the fifteen percent (15%) noted. Overhead and profit on sub tier work will be limited to a combined total of twenty percent (20%). All wage rates and material quantities used will be supported with substantiating backup.

26. **HOISTING:** A tower crane will be provided and controlled by the Concrete Subcontractor. Any hoisting utilizing the tower crane is to be negotiated directly with the Concrete Subcontractor. For budgeting purposes, the straight time charge for the tower crane is approximately $215/hour straight time. The overtime charge is approximately $235/hour for time and a half and $250/hour for double time. Scheduling is at the discretion of the Concrete Subcontractor. Subcontractors are responsible for their own hoisting. The Subcontractor shall perform all loading and unloading of his materials and any special rigging and hoisting will be by the Subcontractor. Two double car (12'-2"L x 4'-1"W x 8'-10"H) manlifts will be provided for personnel. Hoisting of material in the man lifts will be acceptable provided that demand allows. In the event overtime hoisting is

required, Subcontractor shall pay the cost. Reference "Crane & Manlift" plan KC-3 for approximate locations.

27. **TEMPORARY ELECTRICAL SERVICES:** The Electrical Contractor will provide temporary power with four distribution points per floor. The Subcontractor will be required to provide power cords for his work beyond the power service points. Temporary power for welding will not be provided. General safety lighting shall be provided in common areas (corridors, stairwells, garage, elevator lobby, etc) only. Specific task lighting shall be provided by each Subcontractor as his own needs require.

28. **PARKING:** Each Subcontractor is responsible for his own parking and transportation to the site. No parking will be allowed on site.

29. **SANITARY FACILITIES:** Temporary toilets will be provided on site and at every third floor by the General Contractor.

30. **DRINKING WATER:** Drinking water will be provided by at ground level by the General Contractor. Each Subcontractor will be responsible for their drinking water beyond that location.

31. **EXCAVATION, BACKFILL AND COMPACTION:** As it relates to the Subcontractor's work, the Subcontractor must meet the requirements of the Soils Report and the governing agencies and utilities. No additional compensations will be considered for additional work to meet these requirements. The cost for retesting of failed areas will be against the Subcontractor's account. Unacceptable spoils and debris must be removed from the site and legally disposed of.

    a. This Subcontractor shall be responsible for obtaining all O.S.H.A. permits for excavations deeper than 5'-0". This permit shall be presented to the project superintendent prior to commencement of this work and shall remain in the of the project superintendent's possession until this work has been tested, backfilled and accepted by governing authorities.

    b. This Subcontractor shall be responsible for confirming the location of all existing utilities that may occur in the vicinity of the new lines to be installed prior to commencing any trenching and excavations, and shall coordinate all work with the appropriate authority having control over such utilities. Subcontractor shall pay all costs resulting from such damage to any or all utility or other lines.

    c. Prior to the backfilling of any utility carrying trench, this Subcontractor shall have made all necessary as-built notes on his jobsite as-built drawings. Failure to make the necessary notes shall make this Subcontractor liable for any future cost incurred by the Contractor in searching for utility lines improperly located on the as-builts drawings.

d. Any settling of backfill in trenched which may occur during the one-year period after inspection and acceptance of this installation shall be repaired to the satisfaction of the Contractor by this Subcontractor and at his cost, including complete restoration for all damaged paving, walks and other material of installation.

32. **QUANTITIES:** Quantities of work which may be indicated are only "guides" to the amount of work. The Contractor, the Owner, the Architect and Engineer, the various utilities and agencies take no responsibility for the accuracy of the quantity shown or indicated. The final responsibility for quantities lies with the Subcontractor.

33. There shall be absolutely no exclusions to the contract documents with the exception of those which are specifically noted within this attachment.

34. Subcontractor may not use the Owner's name in advertisement.

35. All Subcontractor invoices must be received by Koll Construction by the 20th of each month.

36. Subcontractor shall furnish all materials, labor and equipment required to complete all plumbing work per the contract plans and specifications. The items listed below are for clarification only and shall not be construed as a complete list of work.

The following are specifically included in the Subcontractor's scope of work:

a. Furnish and install all plumbing piping located below the slab on grade. Include all drainage fixtures to be cast in concrete.

b. Furnish and install all pipe sleeves required for piping penetrations at all subterranean garage areas except the ground level deck/slab.

c. Include sleeves for:

i. Pipe penetrations through P-1 deck and walls
ii. Pipe penetrations through P-2 walls
iii. Site water features
iv. Pool equipment
v. Landscape piping

d. Include temporary site water service to hose bib near excavation pit.

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e. Include furnishing and installation of trench drains located at the drive ramps.

f. Stockpile spoils at the direction of the superintendent for disposal by others.

g. Provide shop drawings indicating concrete wall and slab blockouts with sizes. Dimensionally tie blockouts to grid lines. Furnish drawings with sufficient lead time for review by the structural engineer to receive his approval and return of documents prior to the forming of the wall or deck.

Equipment pad shop drawings will be required under the same terms as above.

Failure to provide the shop drawings as stated above will result in extra costs to the concrete and rebar contractors which shall be borne by this subcontractor. Submitting of these shop drawings are to be sequenced to arrive in time for critical pours.

h. Exclude:

i. All equipment
ii. All piping exposed to view

CityFront Terrace
Attachment 'C'
Contract No. 1201-15400
November 22, 1991

This Attachment 'C' is part of the Subcontract Agreement between Koll Construction, Contractor, and Martina Mechanical Enterprises (US), Inc., Subcontractor, for Contract Number 1201-15400 dated November 22, 1991.

"SAMPLE"

Application for Payment

TRADE PAYMENT BREAKDOWN

Project________________ Trade Code________________

Trade________________ Month of________________

Subcontractor________________

Item of Work	Value in Contract Amount of Approved Change Order	% Complete	Value of Work Complete
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
TOTAL			

Change Orders No.

1.
2.
3.
4.
5.

Notes: 1. Itemize contract sum (which equals total) which nets identifiable work components on receipt of this from this column is to be completed and return to the General Contractor for approval.

This form will also be used in submitting monthly requisitions, which for base contract as well as change order work will be used by subcontractor as backup to his requisition.

2. Each month, subcontractor shall complete and total these columns. No other format will be acceptable.

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Exhibit B
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CityFront Terrace
Attachment 'D'
Contract No. 1201-15400
November 22, 1991

This Attachment 'D' is part of the Subcontract Agreement between Koll Construction, Contractor, and Martina Mechanical Enterprises (US), Inc., Subcontractor, for Contract Number 1201-15800 dated November 22, 1991.

The insurance required by the General Terms Article 1 shall include an endorsement naming the following listed entities, their agents, consultants and employees as Additional Insureds on all policies providing required coverages:

1. Marina Village Associates
2. Urban Partners, L.P.
3. Urban West Associates
4. The Kriozere Corporation
5. Gentium Realty Investments Corp.
6. Kabuto Decom, Inc.
7. Kabuto International Corporation
8. Draper and Kramer, Incorporated
9. Solomon, Cordwell, Buenz & Associates, Inc.
10. Architect Milford Wayne Donaldson, Inc.
11. John A. Martin & Associates, Inc.
12. Frederick Russell Brown & Associates, Inc.
13. Rick Engineering Co.
14. Andrew Spurlock Martin Poirier
15. Paul S. Veneklasen & Associates
16. John Kariotis & Associates
17. Francis Krahe & Associates, Inc.

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18. The City of San Diego

19. The Redevelopment Agency of the City of San Diego

20. The Centre City Development Corporation

The Additional Insured endorsement shall state that the coverage afforded the Additional Insureds shall be primary insurance for the Additional Insureds with respect to claims arising out of operations performed by or on behalf of the Contractor and shall state that: 1) if the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on excess or contingent basis, 2) the amount of the company's liability under the insurance policy shall not be reduced by the existence of such other insurance, and 3) the coverage shall not extend to the liability of the Architect, the Architect's Consultants, and agents and employees of any of them arising our of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect, the Architect's Consultants, and agents or employees of any of them provided such giving or failure to give is the primary cause of the occurrence, injury or damage.

DK 03272